

## OCTOBER

### President's Message | Michele Flowers Brooks



#### Team Work is the Key!

**S**chool is back in session! August was a stressful month of getting the kids ready for school while trying to balance work and my obligations with CAPA. It is times like this that show me just how blessed I am to have such strong support in all areas of my life.

**M**y husband has been totally disabled for the past six years. While this is never a good thing and daily we wish that he could be more ambulatory and able to get back into the workforce, it has provided my kids with the opportunity to have a parent at home with them. This means that I can come to work without the stress and concern over the quality of care my children are receiving and none of my kids have to be "latch key kids."

**I** do my part to make sure that hubby (David) is not the sole provider to the kids. To accomplish this, I rely on my strong support at work and within CAPA to manage this.

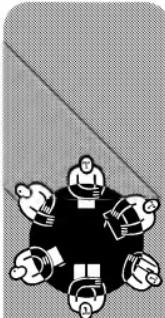
**B**ut for the fact that I work as a team with an excellent attorney, I would not be able to maintain my great work schedule. I cannot remember the last time I have had to work overtime or on the weekends! I know that I am blessed in this regard. I am blessed with an attorney that feels family time is just as

(Cont. on p.13)

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## 2006-2007 Board



### President

Michele Flowers Brooks  
 president@capatx.org  
 391-4973 | 391-6837 fax

### President-Elect

#### NALA Liaison

Pam Hurn  
 Pres\_elect@capatx.org  
 499-3832 | 499-3810 fax

### Parliamentarian/

**Historian**  
 Betsy Boyt  
 parliament@capatx.org  
 463-2886 | 475-2453 fax

### Immediate Past-

**President**  
 Thelma Alvarado-Garza  
 past\_pres@capatx.org  
 476-4346 | 476-4400 fax

### Secretary

Alice Lineberry, PLS, CLA  
 secretary@capatx.org  
 457-7000 | 457-7001 fax

## 2006-2007 Chairs

### CLE

Jennifer Gunter  
 cle@capatx.org

### Publications

Dora Hudgins  
 dhudgins@capatx.org  
 996-6870 | 996-6854 fax

Valerie French

vfrench@capatx.org  
 472-8800 | 476-1129 fax

### Community Service

Vacant  
 (Contact Michele Brooks  
 If interested in working on this  
 committee)  
 communityservice@  
 capatx.org

Michele Flowers Brooks  
 mbrooks@capatx.org  
 391-4971 | 391-6837 fax

### Advertising

Rebecca Besa  
 advertising@capatx.org  
 454-4000 | 453-6335 fax

### Nancy McLaughlin

**Scholarship**  
 Linette Edwards  
 scholarship@capatx.org  
 499-3800 | 499-3810 fax

### Job Bank

Amy Igo  
 job\_bank@capatx.org  
 936-7286

### Social Events

Mike Robinson  
 social@capatx.org  
 892-9300 | 891-0262 fax

**\* \$5.00 of each  
 member's annual dues is  
 set aside for the purpose  
 of printing and publica-  
 tion of the CAPA Brief.**

### Membership

Cheryl Jung CLA, TMLS  
 membership@capatx.org  
 703-5049 | 708-8777 fax

### VLS

Stephanie Seuser  
 vls@capatx.org  
 445-2108

### Programs

Kathy Harkins, MA, CLAS,  
 TMLS  
 programs@capatx.org  
 478-1657 | 478-9016 fax

### Web Services

Mary Baker  
 mbuker@capatx.org  
 260-5000

### Registration/RSPV

Tove Sebring  
 tsebring@brflaw.com  
 454-4000 | 453-6335 fax

Dora Hudgins  
 dhudgins@capatx.org  
 996-6870 | 996-6854 fax

### Public Relations

Vanessa Petrea  
 pr@capatx.org  
 322-5843 | 472-0532 fax

Amy Igo  
 aigo@capatx.org  
 936-7286



# Calendars

## OCTOBER 2006

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

### schedule of events

12 | Board Meeting Location: Jaime's Mexican Restaurant  
12:00 pm

15 | Publications Deadline

17 | Express RSVP Deadline

19 | Email RSVP Deadline

25 | CAPA Luncheon:  
Green Pasture's  
Speaker:  
Dana DeBeauvoir  
Topic: Researching  
Electronic County Clerk

## NOVEMBER 2006

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

### schedule of events

9 | Board Meeting Location: Jaime's Mexican Restaurant  
12:00 pm

15 | Publications Deadline

21 | Express RSVP Deadline

23 | Email RSVP Deadline

29 | CAPA Luncheon:  
Green Pasture's  
Speaker:  
Dana DeBeauvoir  
Topic: Researching  
Electronic County Clerk

## “Ask Judy”



Please feel free to ask any question you can think of, whether it's regarding your profession or something else completely off the wall. Send your email to [askjudy@capatx.org](mailto:askjudy@capatx.org), and then she will answer your questions in the following Brief. Here are some questions to get the ideas flowing...

## Past Questions:

**Question #1:**

What was the first law school founded in the U.S.?

- A. Harvard
- B. Yale
- C. William & Mary
- D. Stanford

**Question #2:**

A stranger kisses you against your will. Legally, which is it?

- A. Assault
- B. Battery

### New Questions:

**Question #1:**

**Question #2:**



# October Luncheon

**October 25, 2006**

**Green Pastures**

**11:45 am—1:15 pm**

**Topic: Researching Electronic County Clerk Records**

**Speaker: Dana DeBeauvoir**

The cost of the luncheon is \$20.00 for Members and Sustaining Members or \$22.00 for Non-Members.

Please make your luncheon reservations by one of the following methods:

1. E-mail Tove Sebring at [RSVP@capatx.org](mailto:RSVP@capatx.org) by noon Thursday, October 19, 2006;
2. Complete on-line RSVP form at [www.capatx.org/rsvp.html](http://www.capatx.org/rsvp.html) by noon, October 19, 2006; or
3. Mail the Express Registration Form located at the bottom of this page with your check by Tuesday, October 17, 2006.

If you make a reservation and are unable to attend, you will still be responsible for the cost of the luncheon. IF YOU PLAN TO ATTEND THE LUNCHEON, BUT DO NOT PLAN TO EAT, PLEASE INDICATE YOUR INTENTIONS. FAILURE TO DO SO WILL RESULT IN A CHARGE FOR LUNCH. No reservations will be accepted after the deadline. The fee for returned checks will be commensurate to fees assessed by the bank. If you are paying with a firm check, please list all attendees on the check.

If you can, please try and arrive before noon. Our goal is to have the buffet line open at 11:45 am so people can be seated by noon.

RSVP's will be accepted until the Thursday before the luncheon. After that, everyone wanting to attend will be charged the \$25 late fee.

## EXPRESS RESERVATION

Please make lunch reservations for # \_\_\_\_\_ at the October 25, 2006 luncheon. Enclosed is my check in the amount of \$ \_\_\_\_\_ made payable to CAPA. (Please attach a separate page for more than two names.)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Firm/Co.: \_\_\_\_\_

Firm/Co.: \_\_\_\_\_

9 Member (\$20.00) 9 Guest (\$22.00)

9 Member (\$20.00) 9 Guest (\$22.00)

9 Attending but not eating.

9 Attending but not eating.

9 Vegetarian Plate Option.

9 Vegetarian Plate Option.

9 Receipt needed.

9 Receipt needed.

9 Name Tag needed.

9 Name Tag needed.

Reservations should be mailed to: Tove Sebring, Attn: Express Lunch RSVP, c/o Bemis, Roach & Reed, LLP, 4100 Duval Road, Building I, Suite 200, Austin, Texas 78759, and must be received no later than Tuesday, October 17, 2006.

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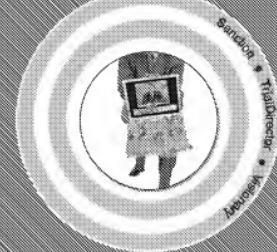
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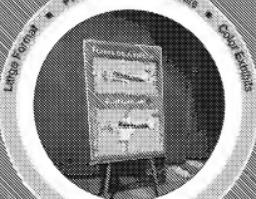
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Volunteer Legal Services  
of Central Texas

## VLS News

### VLS Clinics— Fall 2006

Please contact Stephanie Seuser at [vls@capatx.org](mailto:vls@capatx.org) if you would like to attend, so training can be scheduled at the clinic.

**6:00pm—8:00pm**

Monday - Martin Middle School

October 2, 2006

October 9, 2006—**No Clinic**

October 16, 2006

October 23, 2006

October 30, 2006

**6:00pm—8:30pm**

Wednesday - Webb Middle School

October 4, 2006

October 11, 2006

October 18, 2006

October 25, 2006



## NALA Exam Schedule & Application Filing deadlines are approaching!

Examination Date	Application Filing Deadline**	Late Application Filing Deadline (With \$25 late filing fee)
December 1-2, 2006	October 1, 2006	October 16, 2006
March 23-24, 2007	January 15, 2007	January 29, 2007
July 20-21, 2007	May 15, 2007	May 30, 2007
November 30-December 1, 2007	October 1, 2007	October 16, 2007

### CAPA's Study Group is meeting NOW—preparing for NALA Certification Exams.

For CAPA CLE or Study Group information, contact Continuing Education Chair: Jennifer Gunter 512.476.8591 or email [CLE@capatx.org](mailto:CLE@capatx.org).

## Brief Bytes—Congratulations!!!

Congratulations to Marianne Ross, CP and Stephanie Seuser, CP on passing the July 2006 CLA/CP Exam

## OCTOBER 23RD IT'S YOUR DAY\*

(\*As Resolved by the 75<sup>th</sup> Texas Legislature  
HR 865 was Adopted and Resolution was passed  
that made October 23<sup>rd</sup> Paralegal Day)

JOIN US IN CELEBRATING  
THE "SUBSTANTIAL CONTRIBUTIONS"  
PARALEGALS MAKE "TO THE QUALITY AND  
PROFICIENCY OF LEGAL SERVICES  
THROUGHOUT THE STATE"

## PARALEGAL DAY SOCIAL IRON CACTUS 606 Trinity Street 5:30 pm – 8:30 pm

THIS EVENT IS SPONSORED ENTIRELY BY THE GENEROSITY OF A  
SMALL NUMBER OF CAPA'S SUSTAINING MEMBERS

YOU CAN HELP HONOR THESE EFFORTS BY ATTENDING  
**SEE YOU THERE!**

**VLS INFORMATION | Stephanie Seuser**

()

Join the CAPA Group Going to Bar & Grill  
**Saturday, November 11, 2006**

-FAQ'S

**What is Bar & Grill?** A musical review performed by lawyers who spoof movies, books and entertainment features by twisting them into a legal adventure.

**Can they really sing?** Yes, cast members have credible voices.

**Is it really funny?** Yes, comedy plays a primary role in each event.

**Will I recognize the songs?** Yes, you will recognize the melody but the words will be legal.

**Can I go with a group?** Yes, CAPA and PD invite you to join the group. Mark ticket reservation with the word **CAPA** on the top and send an email to [vls@capatx.org](mailto:vls@capatx.org) and Stephanie Seuser will add you to the group list. You should select tickets in the Mezzanine section for \$15.00 to sit with group members.

**Can we get together before the event for a drink?** Yes, when you send the email adding you to the group list, Stephanie will send you a return email to set up the destination prior to the show. You can also elect to go to the pre-show party for an additional \$25.00 and mingle with those attending the pre-party.

**Where do I send the reservation form and money for the tickets?** AYLA Foundation at the address listed on the reservation form.

**When is Bar & Grill?** Saturday, November 11, 2006 at the Paramount Theatre on Congress Avenue but reservation deadline is Friday, October 27<sup>th</sup> for the group.

**Why should I go to Bar & Grill?** It's fun and it benefits Volunteer Legal Services.

November 11, 2006

Paramount Theatre



Presented by Austin Bar Association

&amp; Austin Young Lawyers Association

Benefiting Volunteer Legal Services of Central Texas



## Ticket Reservation Form

Yes, I want to  
witness the antics of  
Bar & Grill!  
Please reserve the  
following tickets:

Individual Opera Box Seats @ \$50 each  
*Only 24 Box Seats available. Includes ticket to pre-party.*

Orchestra Seats @ \$30 each

House Seats @ \$20 each

Mezzanine @ \$15 each

Pre-party @ \$25 each

\$  Total Amount

### Bar & Grill

### Pre-Party

6:30 to 7:30 p.m. at the  
Paramount Theatre,  
Mezzanine level.  
\$25 per ticket. Drinks and  
hors d'oeuvres will be served.

**Please Note:** To get the best seating available, please purchase your tickets early. Advance ticket orders must be submitted to the Austin Bar/AYLA office by Friday, October 27. Tickets will be mailed to you 10 days before the show. All seating is reserved on a first-come, first-served basis. On Monday, November 6, tickets will be open to the public and available for purchase at the Paramount Theatre box office, located on 711 Congress, or at any STAR ticketing outlet Monday through Friday, 10 a.m. to 5 p.m. and Saturday 10 a.m. to 3 p.m., or tickets can be charged by calling STAR at 469-7469.

**Thank you for responding by Friday, October 27.**

Please PRINT the following information and return this completed form, along with your payment, by October 27, to:

AYLA Foundation  
ATTN: Bar & Grill  
816 Congress Ave., Ste. 790  
Austin, TX 78701-2665  
Fax: 472-2720

For more information, contact  
Debbie Kelly at 472-6279 or  
debbie@ausinbar.org.

Contact Name \_\_\_\_\_ Telephone \_\_\_\_\_

Organization/Firm \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail Address \_\_\_\_\_

### Payment

My check/money order (made payable to AYLA Foundation) for \$ \_\_\_\_\_ is enclosed.

Please charge my contribution of \$ \_\_\_\_\_ to my credit card Disclose Visa, Mastercard, AmEx

Card Number \_\_\_\_\_ Exp. Date \_\_\_\_\_ Signature \_\_\_\_\_



**President's Message | Michelle Flowers Brooks****(continued from p.1)**

important as I do.

If it wasn't for the excellent team working for CAPA, I would not be able to go home at night and dedicate the evening to "family time!" Each and every day I am amazed at how much the volunteers of CAPA give to the organization. I know that I can always count on the "team" to take care of business. This means that I go home each night with security and peace of mind, knowing that the matters within CAPA are being handled and that I am not having to stress making sure nothing is falling through the cracks.

The fact that CAPA has this strong support also means that most of the volunteers are able to take care of CAPA business during business hours and then "turn it off for the day." This is such a necessity! Without this, the team we have would burn out quickly and CAPA would falter. Please do your part to help ensure that CAPA maintains this level of support. No one is asking anyone to do it all alone! We are all here to help and support each other. Why not be a part of that foundation and enjoy the many rewards it has to offer?!?!

---

## October Birthdays!



10/1	Jennifer Gunter	10/15	Holly Gove
10/3	Joyce Goodman	10/15	Vanessa Ray
10/6	Mary Alford	10/18	Kathryn Betros May
10/6	Marianella (Nella) Joseph	10/18	Pat Seward
10/7	Janice Palacios	10/22	Elizabeth Hall
10/7	Beth Watkins	10/27	Gaynell Doehne
10/8	Mollie Fohn	10/27	Virginia O. Gonzalez
10/11	Teresa Shock	10/27	Judith (Judy) Morgan
10/12	Alice Lineberry	10/31	Cheryl Jung

## Happy Birthday!



## CAPITAL AREA PARALEGAL ASSOCIATION

*An Affiliate of the National Association of Legal Assistants, Inc.*

### MINUTES OF THE AUGUST 10, 2006 BOARD MEETING

Location:      Holiday Inn  
1-35 at Town Lake  
Austin, Texas

The meeting was called to order at 12:20 p.m. by President, Michele Flowers Brooks. Board members in attendance were: Michele Flowers Brooks, President; Pam Hurn, President-Elect; Alice Lineberry, Secretary; Andrea Ontiveros, Treasurer; Betsy Boyt, Parliamentarian. Also present were: Vanessa Petrea, Linctic Edwards, and Cairo Dubois.

#### **BUSINESS**

Discussion was held regarding the need for Pam Hurn to register with NALA. Pam will check with her firm; she believes that they will pay for her membership.

Minutes: Motion was made by Pam Hurn to pass the Minutes of the July 13, 2006, Board Meeting and the Minutes of Board Actions – July 14 – August 3, 2006. Motion was seconded by Andrea Ontiveros. Motion passed, and minutes were approved.

Treasurer's Report: The treasurer's report will be circulated by email.

Motion was made by Andrea Ontiveros and seconded by Betsy Boyt to approve the purchase of two \$50 Target gift cards to be given as door prizes at TAPS. Michele will purchase the cards and give them to Cairo Dubois.

Membership: Member count is 230, with 37 sustaining members.

CLE: CLE Study group to meet on August 21st. A location is still needed to conduct the CLE Study Group meetings. Vanessa Petrea indicated that her office should be able to host the meetings. Motion was made by Betsy Boyt and seconded by Alice Lineberry for CAPA to pay for a two-night hotel stay for member(s) who attend the majority of the study group meetings and intend to sit for the exam, so long as the members are in the same city. CAPA will make the arrangements for the hotel. Vanessa Petrea agreed to look into arrangements at the appropriate time.

Brown Bag Seminar. Discussion held and it was agreed that the name should change if event is being sponsored by a vendor and the vendor is providing lunch since "brown bag" would indicate that individual is to bring his or her own lunch.

Community Services. Clean Up still scheduled for August 26th. Betsy Boyt and Andrea Ontiveros thought they would be able to attend.

Job Bank. There have been 11 new job postings since the last board meeting.

Mentor Program. A notice was sent to ACC and Virginia College.

Public Relations. Motion was made by Andrea Ontiveros and seconded by Alice Lineberry to approve the purchase of 500 3M highlighters at a cost of \$1,095 to be given to students when presentations made. Vanessa Petrea indicated that she was going to try to get a new CAPA benefits banner made by one of our vendors.

Social Events. Discussion was held regarding date of Paralegal Day Social. Decision was made to keep on actual date of event, Monday, October 23. The Paralegal Day Social is to be supported by vendors.

Discussion was held regarding Christmas Party being paid fully by CAPA and not supported by vendors. Motion was made by Alice Lineberry and seconded by Betsy Boyt to have the Christmas Party paid solely by CAPA at a cost not to exceed \$3,000 and to not allow the vendors to work during the party.

VLS. Discussion was held regarding CAPA's sponsorship of the Bar & Grill event. It was moved by Betsy Boyt and seconded by Andrea Ontiveros to make a straight donation to VLS in the amount of \$250.

**New Business:**

Women's Advocacy Gala. Discussion was held regarding attendance at the Gala. Vanessa Petrea indicated that she might want to attend. Unused tickets will be made available to members.

New Salary Survey. Motion was made by Betsy Boyt and seconded by Andrea Ontiveros to do an on-line salary survey at a cost of \$60.

There being no further business to discuss this meeting was adjourned at 1:17 p.m.

Respectfully submitted,

*Alice Lineberry*  
Alice Lineberry, PLS, CP



## CAPITAL AREA PARALEGAL ASSOCIATION

*An Affiliate of the National Association of Legal Assistants, Inc.*

### MINUTES OF BOARD ACTIONS –AUGUST 10, 2006 – SEPTEMBER 5, 2006

The following motions were made, seconded, and passed by the Board of Directors:

Motion made on August 10, 2006, by Alice Lineberry to approve the July 2006 treasurer's reports. Motion was seconded by Betsy Boyt. Motion passed.

Motion made on August 29, 2006, by Betsy Boyt to approve the contract for Iron Cactus in order to have the CAPA Day Celebration at that location. Motion was seconded by Alice Lineberry. Motion passed.

Motion made on August 30, 2006, by Andrea Ontiveros to approve Dora Hudgins' purchase of Microsoft Publisher 2003. Motion seconded by Betsy Boyt. Motion passed.

Motion was made on September 5, 2006, by Alice Lineberry to allow jobs posted with CAPA to also be posted with LAT as long as the employer has been consulted and has agreed to such posting. Motion was seconded by Andrea Ontiveros. Motion passed.

Respectfully submitted,

*Alice Lineberry*  
Alice Lineberry, PLS, CP

## Treasurer's Report—August 2006

7:07 AM

09/18/2006

Accrual Basis

Capital Area Paralegal Association  
Profit & Loss Detail

August 2006

Date	Num	Name	Memo	Amount
<b>Income</b>				
<b>Income</b>				
400 - Unrestricted Net Assets-Support				
	403 - Dues	403 - Dues		
08/03/2006	1001	Linda Sacks	Student Membership	22.50
08/03/2006	1001	Kathryn Beras May	Student Membership	35.00
08/03/2006	2442	Germer Gertz, LLP	Student Membership - CP	35.00
08/03/2006	5139	Scrap Digital Imagi	Annual Membership	85.00
08/03/2006	2010	Catherine Blackwell	Renewal Membership	50.00
08/03/2006	2448	T & M Document Services, Inc.	Renewal	75.00
08/03/2006	1048	Stacy Rane	Student Membership	22.50
Total 403 - Dues				325.00
480 - Sales of Merchandise				
08/03/2006	6065	Patricia Seward	Hometag	5.50
08/03/2006	2642	Twila Grade	Hometag	5.50
08/03/2006	667	Cheryl Fisher	Hometag	5.50
08/03/2006	1893	Judith Meisinger	Hometag	5.50
Total 480 - Sales of Merchandise				22.00
479 - Advertising				
08/03/2006	10402	LegalPartners, LLP	Advertising	490.00
Total 479 - Advertising				490.00
Total 400 - Unrestricted Net Assets-Support				827.00
<b>408 - Temporarily Restr. Net Assets</b>				
<b>411 - Program Service</b>				
08/03/2006		Members	Name Tags - July Lunche	75.00
08/03/2006	2443	Germer Gertz, LLP	July Luncheon	42.00
08/03/2006	6770	Gay Lavallee	July Luncheon	15.00
08/03/2006	20943	Wilson Grottenbader	July Luncheon	15.00
08/03/2006	14895	Adami Goldman & Gutfeld	July Luncheon	15.00
08/03/2006	8618	Cathy Gots	July Luncheon	30.00
08/03/2006	6207	Barriger Legal	July Luncheon	35.00
08/03/2006	1015	Kathryn Mackay	July Luncheon	15.00
08/03/2006	21089	Debra Boggis	July Luncheon	15.00
08/03/2006	1339247	Haynes and Boone, LLP	July Luncheon	45.00
08/03/2006	8924	Dubois, Bryant, Campbell & Schwar	July Luncheon	30.00
08/03/2006	2419	Luis Fernando Pared	July Luncheon	45.00
08/03/2006	1021	Andrea R. Cintorino	July Luncheon	15.00
08/03/2006	14915	Whitenhurst Hardness	July Luncheon	47.00

## Treasurer's Report—August 2006 (cont.)

Date	Num	Name	Memo	Amount
08/03/2006	10367	Texas Star Document Services	July Luncheon	30.00
08/03/2006	7600	The Exhibit Company	July Luncheon	15.00
08/03/2006	1838	Ligation Resources, Inc.	July Luncheon	15.00
08/03/2006	2484	Judy Morgan	July Luncheon	15.00
08/03/2006	3421	Scott Zekal	July Luncheon	15.00
08/03/2006	3774	Guy Gullikson	July Luncheon	15.00
08/03/2006	3106	Rej Putnam/Art	July Luncheon	30.00
08/03/2006	67971	Seminar: Reporting & Litigation Servs	July Luncheon	15.00
08/03/2006	5098	Scrapo Digital Imagin	July Luncheon	10.00
08/03/2006	7624	Attorney Resource	July Luncheon	30.00
08/03/2006	480571	Wilson Sonsini	July Luncheon	15.00
08/03/2006	3184	Lloyd, Gosselink et al	July Luncheon	135.00
08/03/2006	18614	Jenkins & Gilchrist	July Luncheon	45.00
08/03/2006	2255	Digital Discovery Solutions	July Luncheon	45.00
08/03/2006	2221	Elizabeth Bordenave	July Luncheon	15.00
08/03/2006	582724	DEA Piper Rudnick	July Luncheon	62.00
08/03/2006	444120	Jackson Walker	July Luncheon	45.00
08/03/2006	2413	E. J. Best	July Luncheon	20.00
08/03/2006	2673	Law Offices of Price Altwirth	July Luncheon	30.00
08/03/2006	79393	Clark Thomas	July Luncheon	15.00
08/03/2006	12059	Clayton & Associates	July Luncheon	15.00
08/03/2006	7248	Robin Ravnibrod	July Luncheon	15.00
08/03/2006	1455	Debra Harter	July Luncheon	15.00
Total 411 - Program Service				1,116.00
Total 458 - Temporarily Restr. Net Assets				1,116.00
Total Income				1,943.00
Expense				1,943.00
Expense				
506 - Answering Service				
08/01/2006	2964	Verbe Text Interactive, Inc.	84987 - August Invoice	15.16
Total 506 - Answering Service				15.16
508 - Bank Service Charges				
08/10/2006	EFT	Return Check Fee	NSF Fee for Check No. 66	15.00
Total 508 - Bank Service Charges				15.00
525 - Gifts				
08/14/2006	VISA	Target	TAPS - Door prize	100.00
Total 525 - Gifts				100.00
538 - Seminar				
08/01/2006	285	DAPA	DAPA Leadership Worksh	90.00
08/04/2006	VISA	Southwest Airlines - Dallas CAPA Seminar	DAPA Leadership Confer	174.10
08/04/2006	VISA	Southwest Airlines - Dallas CAPA Seminar	DAPA Leadership Confer	174.10

## Treasurer's Report—August 2006 (cont.)

Date	Num	Name	Memo	Amount
08/04/2006	VISA	Southwest Airlines - Dallas DAPA Seminar/DAPA Leadership Confer		174.10
Total 530 - Seminar				612.00
<b>545 - Meetings and Conventions</b>				
08/30/2006	2973	Green Pastures	August Luncheon Cost	1,827.21
Total 545 - Meetings and Conventions				1,827.21
<b>545.2 - Scholarship</b>				
08/30/2006	2971	Dora Hudgens	Hotel/Travel Expenses No	100.00
08/30/2006	2972	Paralegal Division	TAPS Registration for Dora	205.00
Total 545.2 - Scholarship				305.00
<b>550 - Merchandise Purchased</b>				
08/01/2006	2967	Tyler Hurn	Reimbursement Compute	39.17
08/17/2006	2969	Promotional Graffiti	Board Name Tags/ Invoice	0.00
Total 550 - Merchandise Purchased				39.17
<b>560 - Postage</b>				
<b>560.1 - Refunds to Members</b>				
08/03/2006	2968	Members	Treasurer Postage Reimbr	5.40
Total 560.1 - Refunds to Members				5.40
Total 560 - Postage				5.40
<b>561 - Postal Box Rental</b>				
08/17/2006	2970	United States Postal Service	Post Office Box For the Ye	40.00
Total 561 - Postal Box Rental				40.00
<b>568 - Programs</b>				
<b>568.2 - Refund to Members</b>				
08/01/2006	2966	Judy Morgan	Reimbursement for purch	46.49
08/30/2006	2974	Patty McKay	Reimbursement for the pu	0.00
08/30/2006	2975	Patty McKay	Reimbursement for the pu	48.59
Total 568.2 - Refund to Members				95.18
Total 568 - Program				95.18
<b>569 - Speaker/officer/board gifts</b>				
08/03/2006	2963	Thelma Alvarado-Garza	Reimbursement - Gifts/GI	490.46
Total 569 - Speaker/officer/board gifts				490.46
<b>700 - Website</b>				
08/10/2006	EFT	Verizon Internet	September ISP Charge	14.95
Total 700 - Website				14.95
Total Expense				3,559.83
Total Expense				3,559.83

**Treasurer's Report—August 2006 (cont.)**

11:44 PM  
09/12/2006

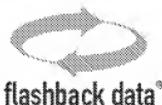
**Capital Area Paralegal Association  
Statement of Cash Flows  
August 2006**

	Aug 06
<b>OPERATING ACTIVITIES</b>	
Net Income	-1,731.52
Net cash provided by Operating Activities	<u>-1,731.52</u>
Net cash increase for period	-1,731.52
Cash at beginning of period	22,605.78
Cash at end of period	<u><u>20,874.26</u></u>

## **Spotlight Vendor**

# **Computer Data = Evidence**

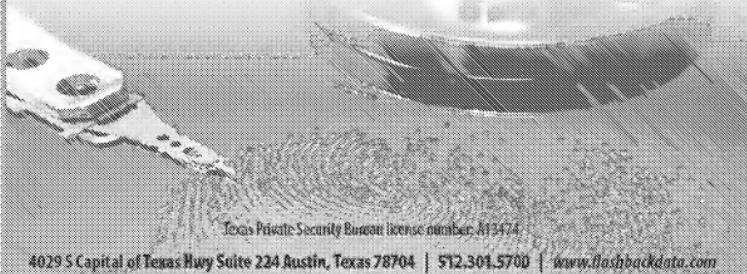
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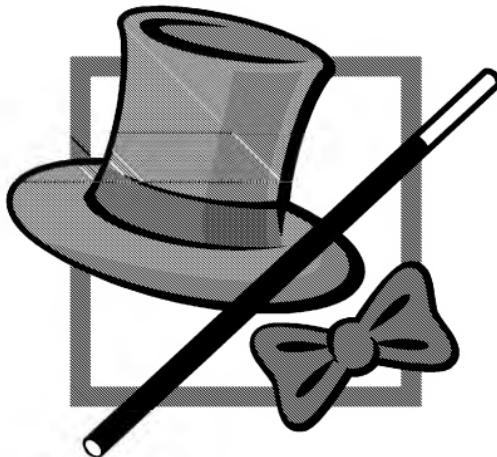


## TEXAS ADVANCED PARALEGAL SEMINAR

*A Three-Day Multi-Track CLE Seminar Sponsored by  
The Paralegal Division of the State Bar of Texas*

**September 20-22, 2006  
Addison, Texas**

**WE'RE PUTTING ON THE RITZ FOR TAPS 2006!**



*Celebrating the Paralegal Division's  
25<sup>th</sup> Anniversary*



## Texas Advanced Paralegal Seminar

***Celebrating the Paralegal Division's 25<sup>th</sup> Anniversary  
"Putting on the Ritz"***

### ***(A CAPA Member's View)***

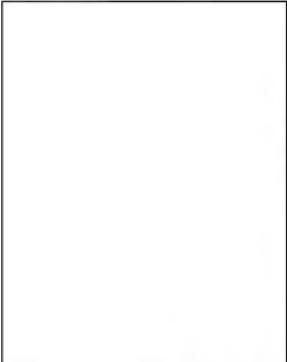
The Social on Wednesday night was a beautiful celebration of the Paralegal Division's 25th anniversary. Four buses took attendees to the Delaney Vineyards in Grapevine, Texas. The remaining daylight allowed anyone who was interested to take a self tour of the 10-acre vineyard. Delaney also has a 100-acre vineyard in Lamesa, Texas. They grow 7 varieties of grapes between the two locations, and they have several award-winning wines available for sale. The celebration kicked off with a wine tasting and the entertainment of Bruce Kleinberg and his Dueling Pianos. A wonderful dinner buffet was prepared and served by Guess Who's Coming to Dinner. The food was wonderful, and the dessert bar was a chocolate fountain with fruit and cookies to dip. Prizes were awarded for the most elegant, most creative and most theme appropriate outfits of black and silver. A champagne toast topped off the evening, and anniversary gifts (silver julep cups with floral arrangements) were enjoyed by all.

The Social on Thursday night was held in the hotel. Comedy Sportz, a comedy improv troupe entertained everyone with comedy improvisation, using "volunteers" from the audience. There were 3 food bars - tacos, soups and baked potatoes. Many door prizes were awarded, including two \$50 gift cards donated by CAPA. To top off the evening two large sheet cakes with candles glowing to celebrate PD's 25th anniversary, were wheeled out for everyone to enjoy.

Three days of classes with 5 tracks of topics were offered - something for everyone. The luncheon on Friday was the final celebration of PD's anniversary. Joe Shannon, Assistant District Attorney for Tarrant County, gave a very informative speech on Identity Theft - a real eye-opener for everyone. Again, many door prizes were awarded and a Grand Prize of \$2,500 was awarded to the lucky person whose name was drawn from all the completed vendor exhibit cards. The exhibit hall had over 40 vendors sharing information regarding the services they provide to help us do our jobs more efficiently. All in all, it was a ***fabulous*** 2006 TAPS seminar and a great way to get our CLE!

*Baro DuBois*

## Nancy McLaughlin Scholarship Fund Winner Announced



Nancy Carmen McLaughlin, CLAS, TPS was a legal assistant at the Law Offices of William Schmidt for twelve years prior to her sudden death on Friday, December 8, 2000. She was dedicated, hard working, and attentive to the needs of clients and her employer.

Many remember Nancy as a very active member of the Capital Area Paralegal Association ("CAPA") and the Legal Assistant Division of the State Bar of Texas, now known as the Paralegal Division ("Division"). She spent many hours volunteering for both organizations and motivating others to become involved themselves. She served in many capacities, most notably as Programs Chair and President of CAPA, and as Editor of the Texas Paralegal Journal, published by the Division

involved themselves. She served in many capacities, most notably as Programs Chair and President of CAPA, and as Editor of the Texas Paralegal Journal, published by the Division

Nancy touched the lives of many people and often you will hear them say they thought of her as family. She was an animal lover and left behind four dogs and a cat. She was a kind and generous friend and devoted her free time to animal causes, Meals on Wheels, and those in need. She is still missed sorely by her many friends.

To honor Nancy, CAPA has awarded a scholarship to Dora Hudgins, another prominent member of CAPA. Please congratulate Dora the next time you see her. The next two pages contain her submitted paper - "Why I Chose To Become a Paralegal."

- The Nancy McLaughlin Scholarship Committee

## WHY I CHOSE TO BECOME A PARALEGAL

By Dora Hudgins, CPLS, CP

As I was growing up in rural Indiana, I always knew that I wanted to be a part of a profession where I could help others. First I thought I wanted to become a nurse; however, after seeing an accident one evening and seeing the small amount of blood that was on another little girl's arm, I decided that probably wasn't an ideal job for me. Next I thought becoming a teacher would be a good profession. My plans were to become an elementary education teacher. When I was in high school and began taking business courses, I realized that I was very good in bookkeeping, typing, shorthand, and office studies. I joined the Future Teachers of America and soon realized that there are many students who couldn't afford to go to college and needed some vocational training in high school which would allow them to go out into the work force immediately after high school and find decent jobs. Many of the local people drove to Indianapolis and worked in the state offices and most of them did not have a college education. I decided that I would rather focus on high school business education and help those students who needed vocational training. After graduation, I began college and was studying music, business economics and general studies. My plans were definitely to go into high school business education.

It's funny how sometimes life throws little obstacles in your way that changes everything - - like meeting the man of your dreams. It was 1970 and the Vietnam War was in full swing. He had just received his draft papers and was headed off to who knows where and maybe never to be seen again! College no longer seemed to be a priority and becoming a

teacher was taken over by becoming a wife and a mother.

Time goes on - - it was 1980. I had been married, divorced, was raising two children, with another one on the way, and had just moved to Austin Texas. Needless to say, I never made it back to college and I had not taken any further educational training. I had retained those good secretarial skills from high school business courses and by relying on those skills I had worked in various office clerical positions over the past 10 years. As soon as my third child was born I went to work for Manpower in downtown Austin. My first assignment was to be in an attorney's office. They had evidently sent others employees to this law office but they were just as quickly sent home. I explained to the recruiter that I had no legal experience and was told that the attorney didn't care about that - he just wanted someone who could type fast. So off I went. When I walked into the lobby of the law office, I was escorted back to a secretarial area. I was astounded at all the files that were stacked up and the attorney was not too happy because his work was not getting done. I began looking into the files and it all seemed very interesting. I started asking questions and was told that I just needed to type what was on the paper and get it all done as quickly as possible. The more I typed the more fascinated I became with the terminology, the procedures, and all the rules and instructions I was given to learn. AND the new equipment that had just been purchased was better than anything I had ever seen. Of course, the attorney told me not to worry about working the new equipment - just type

## WHY I CHOSE TO BECOME A PARALEGAL (CONT.)

whatever I could by using the electric typewriter. I was so intrigued with it all that I took the manual home to the new equipment and quickly figured out that the work could get done much faster if I tried using it. The next day I fired up the newly purchased Burrough's word processing equipment and started pumping out more work. When the attorney first came in and saw I was using the equipment he was not pleased at all; however, when I told him that I'd read the manual last night and I knew that I could get the work done faster, his response was, "If you have any problems, just get back to that typewriter and get the work out." The eldest attorney asked me to come into his office. He told me that they were impressed with my skills and asked if I would be willing to take a full time permanent position working for them if they would be willing to train me on the legal part of the job. Six years later I was still working there!

I became very fascinated with the law and decided that I wanted to learn more. My first step was to join the Austin Legal Secretaries Association. I attended the continuing legal education courses, the local meetings, the state meetings and became very involved. I eventually studied for and passed the Professional Legal Secretaries exam. I still wanted to learn more. I knew that I couldn't afford to go to school, raise three children and still work full time so I attended a paralegal course that was offered at Huston-Tillotson College in 1989. The course was offered on weekends which was the only time I was free anyway. After completing the course and obtaining a Certificate of Completion, I joined and became very involved in the Capital Area Paralegal Association. CAPA offered a study group which I attended and started studying for the National Certified Legal Assistant exam. In 1993 I passed the exam and became a Certified Paralegal.

I truly believe in professional associations and what they can do to help you achieve your dreams. Working in the legal field can be very demanding and there are constant changes. But it is also very rewarding. Without attending continuing education seminars and staying on top of all the new rules, you cannot effectively do your job. You must be constantly in the know. And how better to know, than to attend the monthly luncheons offered by CAPA and attend the seminars offered by the Paralegal Division of the State Bar. I don't want to be just another paralegal - I want to be the best paralegal. And the best requires that you stay on top of all the new rules, regulations, practices, equipment, software, e-filing - whatever is out there on the horizon.

You know, life may throw those little obstacles in your way - but it is how you deal with those obstacles that makes you fail or succeed. I may not be where I am today by following the "traditional" road, but I have worked hard and have given my all to become the best I can be. I love being a paralegal and cannot imagine doing anything else with my life. I love the feeling that I can help others by helping them understand their rights and help them wade their way through the intricate legal system. I love standing beside an attorney and the client in the courtroom knowing that we are prepared, everything is indexed, documents marked properly and filed, notebooks in order, and the client feels comfortable and knows that we believe in him and are doing the best we can for him.

I may have become a part of the legal field by default - BUT I have stayed in the legal field because I want to be a part of this wonderful legal system and I want to continue to learn more, help others and be the best paralegal I can be.

# Electronic Evidence And The Large Document Case: Common Evidence Problems Discovery For A New Millennium

By Robert L. Levy and Patricia L. Casey, Haynes and Boone, LLP

This article is an excerpt from a comprehensive treatment of the topic of Electronic Discovery.

The full article is available at <http://www.haynesboone.com> in the Knowledge Connect section, in Publications. >

## I. The Challenges Of Electronic Evidence

Computer usage now pervades all elements of society. Most businesses and many individuals conduct a significant percentage of communications through electronic media. E-mail, facilitated by the Internet, has become the dominant form of after-hours and intra-office communication. Businesses are also managing in a wide variety of electronic formats, including spreadsheet programs, databases and computer-aided design tools. The proliferation of computers and other electronic forms of communication, such as PDA devices and wireless two-way email, exponentially increases the volume of electronic information. Electronic mail exchange have replaced telephone calls.

This increase in the use of computers creates a number of challenges for litigators, including the collection, management and introduction of electronic evidence. More than five years ago, the Manual for Complex Litigation reached this conclusion, noting that "paperless" data files become increasingly common in litigation.<sup>23</sup> A typical practice of documentors that 15 years ago might have involved less than 1,000 pages of documents can now involve 10,000 or more, and may include information contained in electronic formats that are not readily convertible to paper. More complicated cases can sometimes involve millions of pages of information.

This paper explores issues particular to electronic evidence and discusses related challenges pertaining to the large document case that is often the offspring of electronic dominated litigation, including production of electronic data and managing the data in litigation.

## **III. The New Age Of Electronic Production.**

The world of diagnostic evidence has transformed the Magistrate landscape, creating new opportunities and power dynamics. A recent decision by a Magistrate-Judge at the Northern District of Ohio is illustrative of the challenge in the transitioned era. In *Re Telxon Corporation, Remington Litigation and Magistrate v. Proterostechologies, LLP*,<sup>1</sup> Magistrate Judge Patricia Beaman recommended to the district court that it enter a default judgment in the case against

PrisewinhouseCoopers that could result in actual damages in excess of \$139,000,000.<sup>17</sup> The Magistrate Judge, in a 13 page recommendation, found that PWC engaged in discovery abuse. The finding was largely based on PWC's failure to produce electronic records, including different copies of a database that had been produced in paper form. The Magistrate Judge found that PWC had slightly different copies of the same database application used to manage emails. One copy was retained on the network and another copy came from a laptop. Besides the different versions varied. Although not the only basis for the proposed finding, the failure to completely produce all electronic records was a key element to the recommendation. The proposed ruling is currently pending before the District Court.

The proliferation and importance of electronic devices requires consideration of the unique challenges raised by the medium. Electronic communication is an often fertile ground for new dispositif-type studies.<sup>7</sup> Cases like that on a single e-mail or the ability to demonstrate how a mistake in a formula in a spreadsheet could result in an entirely different conclusion by an expert witness<sup>8</sup> demonstrate

Based in an efficient means of business communication, but it also carries risks and potential liability for any company. "Like ghosts from the past, these forgotten electronic data issues can now subject to legal and discovery requests." <sup>10</sup> It is particularly susceptible to revealing "smoking gun" evidence. In absent circumstances, particularly ones of use and informed, lead to the "immortalizing" of information that normally would never be written down or disseminated in an office setting. For example, an e-mail message in a sex discrimination case brought by a terminated employee cost one company \$220,000 when the plaintiff discovered an e-mail message from the company president to the head of personnel stating, "Get rid of that b----."

Employees' perceptions of internal e-mail as inferior often results in coded messages to which others may attach unintended meanings. Details have

<sup>7</sup> Authors estimate that at least one-third of a business's data is in unstructured format. See Gregory S. Johnson, *A Practitioner's Overview of Big Data*, 33 *Cheat. L. Rev.* 367, 388 (2007); see also Donald C. Munro, *Discovery of Structured Data From Unstructured Sources*, 33 *Cheat. L. Rev.* 383 (2006).

7. *Indicates, prior to the date of issuance of this order, the name of the*

As As. *Streptomyces* Gen. Sup. *Strept.* 200CV2008, 200CV1008,  
200CV11, 200CV2005, 200CV16, 200CV15.

THE BOSTONIAN SOCIETY

<sup>7</sup> Michael Glass, *Judge Ruth Bader Ginsburg: A Life* (N.Y.: Times, January 13, 2003).

5. Some representatives note that in some cases the word *informed*

<sup>7</sup> Matthew Goldstein, *Recover Asset Company Allegedly Present Energy Issues of Recovery* 211 N.Y.S.2d 1 (2004).

• *Final approach? (33)*

## Electronic Discovery (Cont.)

been the focus of high profile litigation, most notably *United States v. Microsoft*<sup>7</sup>, in which Bill Gates' testimony in depositions was contradicted by his e-mail exchanges.<sup>8</sup>

E-mail messages are just one example. A growing number of records, including invoices and accounting data, are available on computers. Multiple versions of word processing documents are available on computers. Individuals and companies routinely capture information in spreadsheets on computers. In other words, in addition to the discovery of paper documents, counsel must seek discovery of electronic data or risk missing crucial information.<sup>9</sup> A non-exhaustive list of documents that might be requested includes: customer lists; financial records; purchase and sales reports; personnel files; original documents such as letters, manuscripts, invoices, and design specifications; drafts of original documents such as letters or memos; databases used by individuals or local area networks; computer programs evidencing a particular process, incorporating specific information, or documenting the use of proprietary methodologies; computer operation logs; existing usage information; logs and text of electronic messages or e-mail, including "readied" or deleted messages, message drafts, or mailing lists; electronic messaging records for messages within a specific company's network or across a wider network, such as the Internet; manufacturer's specifications for the computer, source code for computer programs, voice mail transcriptions, and scheduling systems.<sup>10</sup>

### III. Discovery Of Electronic Information - Requests And Responses

The first common evidence problem an attorney faces is how to collect electronic evidence. In addition to the more common problems faced by attorneys coming through warehouses of stored records, counsel in a case focusing on electronic data must become familiar with the formats of the recovery and reconstruction of such data. This includes a basic understanding of the terminology used by computer

forensic experts, some technical knowledge of data formats and signals, and familiarity with the methods used to recover and reconstruct electronic data. Many lawyers are unfamiliar with technological issues that may arise. Today's lawyer must be ready to address these issues. At a minimum, the practitioner can assist business clients by advising them to gain control of their computer information and to implement information retention and e-mail policies.<sup>11</sup>

A helpful resource for managing electronic evidence has been developed by the Sedona Conference, a leading group of industry professionals (including attorneys, litigation support professionals and vendors) who meet regularly to explore issues in electronic discovery and recommend guidelines, rule changes and methods to manage electronic information.<sup>12</sup> The Conference has developed a particularly helpful guide titled THE SEDONA GUIDELINES Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age.<sup>13</sup>

#### A. The Right to Production of Computer Records

Discovery rules now address the production of electronic data, though the rules have yet to address many of the particular nuances involving electronic media. Under Texas Rule of Civil Procedure 196.4, for example, litigants are required to produce electronic data that is "reasonably available," if requested.<sup>14</sup> Where the responding party demonstrates that the data cannot be produced through reasonable efforts, Rule 196.4 requires the requesting party to reimburse the cost of production.<sup>15</sup> Where the court finds that the production of information without an accompanying computer analysis would result in undue hardship or burden on the responding party, the court can require the producing party to make use of its computer system to generate the required information. Thus, cost can be a

<sup>7</sup> See The Sedona Conference, at [www.sedonacenterforconflict.org](http://www.sedonacenterforconflict.org) that visited Oct. 12, 2006.

<sup>8</sup> The Sedona Conference, The Sedona Guidelines Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age, at <http://www.sedonacenterforconflict.org/guidelines.html> that visited Oct. 12, 2006.

<sup>9</sup> Tex. R. Civ. P. 196.4. Electronic or Magnetic Media.

<sup>10</sup> To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request production of electronic or magnetic data and specify the form in which the responding party must produce. The responding party must produce the electronic or magnetic data that is responsive to the request that is reasonably available to the responding party or in ordinary course of business.

<sup>11</sup> See Rule 196.4 requires the producing party to absorb the cost of producing access to listing of production. Tex. R. Civ. P. 196.4. A court does not require an explicit finding of good cause. Tex. R. Civ. P. 196.6.

<sup>7</sup> *United States v. Microsoft*, 97 F. Supp. 2d 97 (D.D.C. 2000), *overruled*, 230 F.3d 434 (D.C. Cir. 2000), *over denied*, 530 U.S. 923 (2001).

<sup>8</sup> *See* Getting Anywhere, Sedona System IP Law Alert Computer, Client Legal Committee, Card Electronics Advisors, Inc. (Mar. 2003), [www.sedonacenterforconflict.org](http://www.sedonacenterforconflict.org).

<sup>9</sup> John H. Jones & Kenneth R. Jones, *Practical Rule 196.4 on Electronic Data in Civil Discovery*, *Local. Trials. Law.* 31, 1998, at 221.

<sup>10</sup> *Joint Model of Practice: Electronic Records and Recoverability in Litigation: A Plan for Your Computer-User Organization*, the Computer and Electronic Records Management (CERM) Task Force, at 15, 1998, at 228.

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significant consideration.<sup>17</sup> In addition to the cost of production, a litigant must consider the cost of reviewing and evaluating electronic data and putting it into a format that will be useful and, in many cases, admissible at trial.

The basic rules of discovery apply to the computer generation or storage of data and information that may be offered in evidence at a civil trial. For the most part, issues concerning the scope of pretrial discovery of computer evidence have been left to the trial courts to resolve according to established rules of procedure and evidence.<sup>18</sup>

The Federal Rules of Civil Procedure permit the discovery of relevant computer-generated evidence. The 1993 revision to the Rules requires parties to disclose the description and location of relevant data compilations early in the litigation, before discovery requests are submitted.<sup>19</sup> Unlike the Texas Rules, however, the current version of the Federal Rules does not specifically address procedures and costs associated with the production of electronic evidence. As a result of a series of rulings in Federal Courts (including the *Zubulake* case mentioned below), the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has adopted amendments to Federal Rules 26 and 37 dealing with electronic discovery issues (reviewed below).

The current Federal Rules authorize the production of "designated documents" including "data compilations," which clearly include electronic computer data.<sup>20</sup> According to the Advisory Committee Note, the burden is on the responding party to produce the data in a readable form, which typically means a computer printout. The trial court also has discretion to compel the disclosure of the source code when necessary to verify the authenticity and accuracy of the data.<sup>21</sup> At the same time, in some states, where no adequate index of documents exists except in an opposing party's litigation support system, the court will not compel that party to use its litigation support system for the benefit of an adverse party.<sup>22</sup> Therefore, a party can be compelled to produce relevant documents, but may not be required to sort or analyze the data.<sup>23</sup> It is

the nature of what is being produced that governs.<sup>24</sup> Production of electronic data must be allowed where it forms the basis of an expert's testimony for effective cross-examination purposes. The court in *Cleveland Electric Illuminating Co.*,<sup>25</sup> observed that any use of organized data presents some obstacle to effective cross-examination because of the difficulty of knowing the power methods employed in programming the computer, as well as the effectiveness of the person responsible for feeding data into the computer. In that case, Defendant compelled pretrial production of data and evidence from computer simulations underlying the conclusions contained in the report of certain plaintiff's experts. The court granted the motion to compel production of computerized data relied upon by the expert because that kind of evidence is essential for effective cross-examination.

On April 12, 2006, the United States Supreme Court approved, without comment or dissent, proposed amendments to the Federal Rules of Civil Procedure.<sup>26</sup> The Amendments have been transmitted to Congress and unless Congress enacts legislation to reject, modify, or defer the amendments, are unlikely to occur.<sup>27</sup> The amendments will take effect December 1, 2006.<sup>28</sup> The new Federal Rules officially incorporate electronic documents in the discovery process and better appreciate the special problems associated with managing massive volumes of electronic information.

Rules 26 and 37 will explicitly incorporate electronic discovery into pretrial scheduling and planning. Rules 16(b)(5) and (6) will allow the court to include in scheduling orders provisions for disclosure or discovery of electronic information and agreements reached by the parties regarding the retention of claims of privilege or protection of trial preparation materials after production.<sup>29</sup> Rules 26(3)(B) and (C) will require that parties disclose relevant electronic discovery issues when they confer pursuant to the Rule.<sup>30</sup> One commentator characterized the changes as relatively

<sup>17</sup> See Am. Bar. Socio. for Technol. & Justice and Association of Electronic Data in Evidence § 25 (2003).

<sup>18</sup> See, e.g., Texas R. Civ. P. 37 Discovery of Computer Evidence § 37.001.

<sup>19</sup> See R. Civ. P. 37.

<sup>20</sup> See R. Civ. P. 37.

<sup>21</sup> See C.J. Parker et al., *Computer-Based Litigation Support Systems: The Discretionary Issue*, 30 *UETC L. Rev.* 669 (1998); see also *Montana v. Dept. of Litigation Support Systems*, § 2,710-12 (1998).

<sup>22</sup> See, e.g., *Cal. Civ. Proc. Code* § 2047 (2003).

<sup>23</sup> *Sandus v. Arco*, 550 P.2d 682, 220 Or. 397 (1976), upheld on appeal, 437 U.S. 366 (1978).

<sup>24</sup> See, e.g., *Rankin v. Montgomery Ward & Co.*, 91 F.R.D. 338 (M.D. Ill. 1980) (compelling employee records in sex discrimination case); *Davis v. Automobile Sales*, 88 F.R.D. 191 (S.D. Ohio 1985) (allowing trial right over witness' details of defendant's witness access to relevant disclosure).

<sup>25</sup> *Cleveland v. Cleveland Elec. Illuminating Co.*, 909 F. Supp. 1397 (M.D. Ohio 1996).

<sup>26</sup> U.S. Court. Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 252 (1996).

<sup>27</sup> See *Media Electronics, Inc. v. Electronic Data Systems Corporation*, 26 Cir. L. Rep. 2d 2000 (2006) ("The proposed rules are widely expected to take effect January 1, 2007").

<sup>28</sup> U.S. Court. Improvement Act.

<sup>29</sup> Fed. R. Civ. P. 16(b)(5), (6) (effective Dec. 1, 2006).

<sup>30</sup> Fed. R. Civ. P. 16(c)(1)(B) (effective Dec. 1, 2006).

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minor.<sup>11</sup> However, another commentator noted that amendments may complicate some cases, as parties may waste time and money educating themselves about electronic discovery issues or may be forced to make significant discovery decisions early in the case.<sup>12</sup>

Amended Rule 26(a)(1)(E) requires that parties provide the other side with copies of all electronically stored information that such party plans to use at trial.<sup>13</sup> As well, Rules 34(e), 34(m) and (b), and 45 will allow for interrogatories, requests for production,<sup>14</sup> and subpoenas<sup>15</sup> of electronically stored information. The language of Rule 34 was updated somewhat, but the original "data compilations" language was retained; notably, "electronically stored information" was added to the Rule's title alongside "documents."<sup>16</sup>

More significantly, however, the amendments impose limits on electronic discovery, the proposed amendments would limit access to electronic discovery that is not reasonably accessible and create a two step process for discovery. Specifically, amended Rule 26(b)(2)(B) states a responding party need not produce relevant, non-privileged electronic information if such party can show the information is not reasonably accessible because of undue burden or cost;<sup>17</sup> thus, the Rules would put the burden on the responding party to identify the category of documents that are alleged to be inaccessible (including backup-tapes). If the responding party meets this burden, the court may nonetheless order such discovery if the requesting party shows good cause "considering the limitations under Rule 26(b)(2)(C)."<sup>18</sup>

One commentator has welcomed new Rule 26 as creating two thresholds for responding parties.<sup>19</sup> First, responding parties could re-characterize their duty by saying it is inaccessible from the parties' would thereby eliminate their production duty yet preserve the data for their own use.<sup>20</sup> Second, the lofty, ambiguous "good faith" standard would allow responding parties to

arbitrarily decide what information they will produce.<sup>21</sup>

The new rules also include a safe harbor provision for companies that can show loss of data was the result of normal business practices.<sup>22</sup>

Not surprisingly, the new Rules have stimulated substantial disagreement among litigators.<sup>23</sup> For example, some commentators believe that federal courts are better-equipped to make decisions regarding electronic discovery issues than the Rule Committee, that amendments to the discovery rules specifically addressing electronic discovery are unnecessary, and that imposing hard and fast rules on the dynamic practice of discovery is inappropriate.<sup>24</sup> Other commentators, however, see the new Rules as a "middle step forward" and believe the rules will reduce litigation costs, eliminate judicial confusion, and create much-needed electronic discovery production standards.<sup>25</sup>

### I. Imposing Discovery of Electronic Evidence

Although the new rules will impact the scope of discovery, electronic data courts have long addressed what types of discovery will be allowed. Discovery of managerial information can sometimes involve more invasive procedures. In *Playboy Enterprises v. Welles*,<sup>26</sup> plaintiff sued defendant alleging that defendant operated an internet web site that infringed and violated plaintiff's trademarks. In its motion for discovery, plaintiff sought access to defendant's computer hard drive to recover deleted electronic mail. The court held that the defendant's hard drive was discoverable because it was likely that relevant information was stored there, and its production would not be unduly burdensome.

In contrast, the court in *State Proprietary Group L.P. v. Adipreneur, Inc.*,<sup>27</sup> denied plaintiff access to electronic data deleted from defendant's file because hard copy files were already produced. The plaintiff alleged that the defendant infringed upon its trademark by creating a name and account for defendant's internet business that

<sup>11</sup> Kenneth J. Wilcock, Electronically Stored Information: The December 2008 Amendments to the Federal Rules of Civil Procedure, 4 Tex. L. Tech. & Business Page 17, 198 (2008).

<sup>12</sup> Meyer, *supra* note 11, at 221.

<sup>13</sup> See R. Cr. P. 34(e)(2)(B)(ii)(B)(i)(B)(ii).

<sup>14</sup> See R. Cr. P. 34(e)(2)(B)(ii)(B)(i)(B)(ii).

<sup>15</sup> See R. Cr. P. 34(e)(2)(B)(ii)(B)(i)(B)(ii).

<sup>16</sup> Wilcock, *supra* note 11, at 195.

<sup>17</sup> See R. Cr. P. 34(e)(2)(B)(ii)(B)(i)(B)(ii).

<sup>18</sup> Id.

<sup>19</sup> David B. Shultz et al., *Comment: Rethinking the Inaccessible Rule: Assessing the Federal Rules of Civil Procedure's Electronic Discovery*, 25 Tex. L. Tech. 195, 225 (2008).

<sup>20</sup> Id.

<sup>21</sup> 24 A.L.R.2d 28.

<sup>22</sup> See infra notes 26-29 and accompanying text for a discussion about amended Rule 26(e)'s safe-harbor provision.

<sup>23</sup> See, e.g., *Patent & Trademark Electronic Discovery in Plaintiff's Case over New York Progressive Net, LLC*, January 26, 2008, available at <http://www.uscwp.org/patent/2008/01/26/080126.html>.

<sup>24</sup> Meyer, *supra* note 11, at 220-17.

<sup>25</sup> O'Brien, *supra* note 11, at 178.

<sup>26</sup> *Playboy Enterprises v. Welles*, 118 F.R.D. 104 (S.D. Cal. 1995) and *Adipreneur, Inc. v. Playboy Entm't Grp, Inc.*, 217 F.R.D. 489 (S.D.N.Y. 2003) (hereinafter "Playboy" and "Adipreneur" are to prevent adverse parties from filing, 200 F.R.D. 437, 446 (S.D.N.Y. 2003).

<sup>27</sup> *State Prop. Group L.P. v. Adipreneur, Inc.*, 194 F.R.D. 659 (S.D. Cal. 2003).

## Electronic Discovery (Cont.)

were similar to the plaintiff's registered trademarks. Thus, the plaintiff sought to compel production of the defendant's programming computer files and access to defendant's computer for inspection. The court refused plaintiff access to the evidence in a reversal of its previous ruling that the plaintiff was entitled to recover the deleted files.

In *Alexander v. FBI*,<sup>50</sup> production of the backup and archived e-mails and deleted or archived computer files was denied because it could not lead to discovery of any information responsive to the request for production.

In *Jones v. Gould*,<sup>51</sup> insecticide plaintiffs sought access to various electronic databases maintained by the state environmental authorities in a suit that challenged the state's "skin-in-the-game" program in its maximum-security prisons. During discovery, plaintiffs limited their request to only four of the thirteen maximum-security prisons.<sup>52</sup> The state complied by providing the plaintiffs with over 300,000 pages of documents.<sup>53</sup> After nearly six years of litigation, the plaintiffs requested the production of defendant's electronic records and databases.<sup>54</sup> The court analyzed whether the databases themselves were relevant and stated:

[t]he database in question, which relate to the location of prisoners, the numbers of medical problems and pharmaceutical use . . . are generally relevant to the plaintiffs' inquiry. . . . At the same time, it is far from clear from the evidence presented that all of the information in the database sought goes to those uses.<sup>55</sup>

The court further considered that discovery of the databases would not only disclose the data, but also "the organizational framework of the database," the disclosure of which would effectively expose "a great deal about the way that [the defendant] maintains, stores, and classifies information."<sup>56</sup> The resulting issue is whether the way a party "maintains, stores, and classifies information" revealed through the discovery of a party's electronic database is relevant to the litigation for discovery purposes. The Southern District

<sup>50</sup> *Alexander v. FBI*, 188 F.R.D. 114, 137 (D.D.C. 1999).

<sup>51</sup> *Jones v. Gould*, No. 95 CIV. 96267/1994, 2003 WL 1692826, at \*5 (S.D.N.Y. May 16, 2003).

<sup>52</sup> At "checkoff/flag" means what two prisoners are deleted in a cell originally designed for single inmates. *Id.*

<sup>53</sup> *Id.* at \*2.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at \*2.

<sup>56</sup> At the exact same time that year, more, "this defendant would not be merely the government of providing the database, in order to ensure any statistical use of the data, the state would have to affixatively keep and provide plaintiff's experts the explanation of a manual on how the data is structured and requested." *Id.*

of New York expressed concern over whether the discovery of an electronic database is relevant, but assumed the database was relevant for discovery purposes and ultimately decided the discoverability issue on other grounds.<sup>57</sup>

Although database architecture may be discoverable when it is relevant to the litigation, it may not be relevant when it is only requested for the purpose of manipulating data contained in the database. Such discovery would provide the requesting party sensitive information about how the producing party organizes and stores data that is not relevant to the litigation.

In September 2005, a federal district court in Kansas held that a "party is ordered to produce electronic documents as they are maintained in the ordinary course of business, the producing party should produce the electronic documents with their metadata intact," absent an appropriate objection, an agreement between the parties to do otherwise, or a protective order.<sup>58</sup> In this case, *Williams v. Sprint/United Management Co.*, the court ordered the defendant to provide responsive discovery, specifically Excel spreadsheets, with the metadata intact.<sup>59</sup> When the defendant pointed out to the court that no one had requested the inclusion of the metadata anyway,<sup>60</sup> the court wrote that "[p]rodefendant should reasonably have been aware that the plaintiffs' request was accompanied within the Court's directive that it produce the electronic [documents] as they were maintained in the regular course of business."<sup>61</sup>

Similarly, in an unpublished opinion, a California appellate court required a responding party to produce a CD-ROM version of land copy documents as the responding party would have access to the metadata.<sup>62</sup> The responding party argued it should not have been required to provide the CD-ROM at its expense because, in the ordinary course of business, its documents were not stored in CD-ROM format.<sup>63</sup> The

<sup>57</sup> *Id.* at \*3-5. The court went on to discuss the application of the checkoff and determined that the burden of the defendant outweighed the potential benefit to the plaintiffs considering that the defendant had already produced the required documents in hardcopy, and would face an enormous amount of cost in providing plaintiffs' experts with the materials necessary to utilize the database in a meaningful way. *Id.* at \*10-11.

<sup>58</sup> *Williams v. Sprint/United Management Co.*, No. CIV.A.03-2205-JWL/DGW, 2005 WL 1616254, at \*1 (D. Kan. Sept. 23, 2005).

<sup>59</sup> *Id.* at 16. The defendant argued objection for explicitly producing the responsive documents in a format other than how they maintained them in the ordinary course of business with the metadata "intact." *Id.* at 22, at \*13-14.

<sup>60</sup> *Id.* at 13-14.

<sup>61</sup> *Id.* at 13.

<sup>62</sup> *Global Compliance, Inc. v. Am. Audio Eng. Co.*, Nos. 03-70812, 03-70817, 03-73746, 03-74037, 2006 U.S. App. LEXIS 41483, 2006-27 Cal. Ct. App. LEXIS 33, 2006.

<sup>63</sup> *Id.* at \*26.

## Electronic Discovery (Cont.)

court stated, however, a CD-ROM is no more than a copy, similar to photocopying a paper document.<sup>62</sup>

Another court went further, including deletion of metadata as admissible spoliation of evidence deserving of sanction.<sup>63</sup> In such case, the court found the defendant had not only improperly deleted electronic evidence off of his laptop but had also wrongfully altered the undeleted files' metadata after the defendant had received notice of plaintiff's claim against him and, later, an order from the court to turn over the laptop to the plaintiff.<sup>64</sup> The court imposed sanctions because of both the deletion of files and the alteration of metadata.<sup>65</sup>

### 2. Difficulties of Massive Electronic Discovery

Because electronic discovery has its dangers, as the government discovered when it recently electronically filed an Opposition to a Motion to Quash a Grand Jury Subpoena in a San Francisco federal court, joined, the government's apparent underestimation of metadata capabilities surrendered confidential details of a grand jury investigation.<sup>66</sup> About eight pages of confidential material regarding a grand jury investigation were stored in a handful were electronically flushed out in the government's brief.<sup>67</sup> However, the brief could be viewed by simply putting the documents into a word processing program; in no time, nationwide news outlets revealed the glitch and the entire document was available to the public.<sup>68</sup> Thus, courts allowing massive electronic discovery must beware that it may reveal not only irrelevant but also confidential information.

### 3. The Burden Test Applied

Until the new Federal rules are in play, courts will evaluate the burden of producing electronic evidence in determining whether and how to require production. In *Liesen v. A.H. Belva Co.*,<sup>69</sup> the plaintiff sought production of the defendant's backup tapes, and the defendant objected on the ground that recovering and searching through the back-up tapes would be extremely expensive. Rejecting defendant's argument, the Court stated that when a company makes the decision to recall

<sup>62</sup> *Id.* at 755-56.

<sup>63</sup> *Adams v. Brinkley Assoc.*, No. 01-C-1868, 2006 WL 1208820, at \*6-7 (S.D. Ill. May 8, 2006).

<sup>64</sup> *Id.* at 764.

<sup>65</sup> *Id.* at 764.

<sup>66</sup> *Adams Ljung, Personal Health Options Health Care Loss Case*, N.Y. Times, Nov. 26, 2006, available at <a href="http://www.nytimes.com/2006/11/26/us/26subpoena.html?hp&oref=1101010200&oref2=1101010200&oref3=1101010200&oref4=1101010200&oref5=1101010200&oref6=1101010200&oref7=1101010200&oref8=1101010200&oref9=1101010200&oref10=1101010200&oref11=1101010200&oref12=1101010200&oref13=1101010200&oref14=1101010200&oref15=1101010200&oref16=1101010200&oref17=1101010200&oref18=1101010200&oref19=1101010200&oref20=1101010200&oref21=1101010200&oref22=1101010200&oref23=1101010200&oref24=1101010200&oref25=1101010200&oref26=1101010200&oref27=1101010200&oref28=1101010200&oref29=1101010200&oref30=1101010200&oref31=1101010200&oref32=1101010200&oref33=1101010200&oref34=1101010200&oref35=1101010200&oref36=1101010200&oref37=1101010200&oref38=1101010200&oref39=1101010200&oref40=1101010200&oref41=1101010200&oref42=1101010200&oref43=1101010200&oref44=1101010200&oref45=1101010200&oref46=1101010200&oref47=1101010200&oref48=1101010200&oref49=1101010200&oref50=1101010200&oref51=1101010200&oref52=1101010200&oref53=1101010200&oref54=1101010200&oref55=1101010200&oref56=1101010200&oref57=1101010200&oref58=1101010200&oref59=1101010200&oref60=1101010200&oref61=1101010200&oref62=1101010200&oref63=1101010200&oref64=1101010200&oref65=1101010200&oref66=1101010200&oref67=1101010200&oref68=1101010200&oref69=1101010200&oref70=1101010200&oref71=1101010200&oref72=1101010200&oref73=1101010200&oref74=1101010200&oref75=1101010200&oref76=1101010200&oref77=1101010200&oref78=1101010200&oref79=1101010200&oref80=1101010200&oref81=1101010200&oref82=1101010200&oref83=1101010200&oref84=1101010200&oref85=1101010200&oref86=1101010200&oref87=1101010200&oref88=1101010200&oref89=1101010200&oref90=1101010200&oref91=1101010200&oref92=1101010200&oref93=1101010200&oref94=1101010200&oref95=1101010200&oref96=1101010200&oref97=1101010200&oref98=1101010200&oref99=1101010200&oref100=1101010200&oref101=1101010200&oref102=1101010200&oref103=1101010200&oref104=1101010200&oref105=1101010200&oref106=1101010200&oref107=1101010200&oref108=1101010200&oref109=1101010200&oref110=1101010200&oref111=1101010200&oref112=1101010200&oref113=1101010200&oref114=1101010200&oref115=1101010200&oref116=1101010200&oref117=1101010200&oref118=1101010200&oref119=1101010200&oref120=1101010200&oref121=1101010200&oref122=1101010200&oref123=1101010200&oref124=1101010200&oref125=1101010200&oref126=1101010200&oref127=1101010200&oref128=1101010200&oref129=1101010200&oref130=1101010200&oref131=1101010200&oref132=1101010200&oref133=1101010200&oref134=1101010200&oref135=1101010200&oref136=1101010200&oref137=1101010200&oref138=1101010200&oref139=1101010200&oref140=1101010200&oref141=1101010200&oref142=1101010200&oref143=1101010200&oref144=1101010200&oref145=1101010200&oref146=1101010200&oref147=1101010200&oref148=1101010200&oref149=1101010200&oref150=1101010200&oref151=1101010200&oref152=1101010200&oref153=1101010200&oref154=1101010200&oref155=1101010200&oref156=1101010200&oref157=1101010200&oref158=1101010200&oref159=1101010200&oref160=1101010200&oref161=1101010200&oref162=1101010200&oref163=1101010200&oref164=1101010200&oref165=1101010200&oref166=1101010200&oref167=1101010200&oref168=1101010200&oref169=1101010200&oref170=1101010200&oref171=1101010200&oref172=1101010200&oref173=1101010200&oref174=1101010200&oref175=1101010200&oref176=1101010200&oref177=1101010200&oref178=1101010200&oref179=1101010200&oref180=1101010200&oref181=1101010200&oref182=1101010200&oref183=1101010200&oref184=1101010200&oref185=1101010200&oref186=1101010200&oref187=1101010200&oref188=1101010200&oref189=1101010200&oref190=1101010200&oref191=1101010200&oref192=1101010200&oref193=1101010200&oref194=1101010200&oref195=1101010200&oref196=1101010200&oref197=1101010200&oref198=1101010200&oref199=1101010200&oref200=1101010200&oref201=1101010200&oref202=1101010200&oref203=1101010200&oref204=1101010200&oref205=1101010200&oref206=1101010200&oref207=1101010200&oref208=1101010200&oref209=1101010200&oref210=1101010200&oref211=1101010200&oref212=1101010200&oref213=1101010200&oref214=1101010200&oref215=1101010200&oref216=1101010200&oref217=1101010200&oref218=1101010200&oref219=1101010200&oref220=1101010200&oref221=1101010200&oref222=1101010200&oref223=1101010200&oref224=1101010200&oref225=1101010200&oref226=1101010200&oref227=1101010200&oref228=1101010200&oref229=1101010200&oref230=1101010200&oref231=1101010200&oref232=1101010200&oref233=1101010200&oref234=1101010200&oref235=1101010200&oref236=1101010200&oref237=1101010200&oref238=1101010200&oref239=1101010200&oref240=1101010200&oref241=1101010200&oref242=1101010200&oref243=1101010200&oref244=1101010200&oref245=1101010200&oref246=1101010200&oref247=1101010200&oref248=1101010200&oref249=1101010200&oref250=1101010200&oref251=1101010200&oref252=1101010200&oref253=1101010200&oref254=1101010200&oref255=1101010200&oref256=1101010200&oref257=1101010200&oref258=1101010200&oref259=1101010200&oref260=1101010200&oref261=1101010200&oref262=1101010200&oref263=1101010200&oref264=1101010200&oref265=1101010200&oref266=1101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## Electronic Discovery (Cont.)

no different from paper documents in that both are subject to disclosure.<sup>52</sup> Therefore, the presumption that the responding party must bear the expense of complying with requests for discovery is applicable to electronic documents, just as it is to paper documents.<sup>53</sup>

The cost burden should only be shifted when electronic discovery imposes an "undue burden or expense" on the responding party.<sup>54</sup> The burden is under whom it "entwines to likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues."<sup>55</sup> The analysis does not turn on whether the information sought is electronic, but primarily on whether the information is kept in an accessible or inaccessible format.<sup>56</sup> "[I]n the world of electronic data, thanks to search engines, any data that is retained in a machine readable format is typically accessible."<sup>57</sup>

According to the court in *Subsidiary I*, a three step analysis is required when deciding disputes regarding the scope and cost of discovering electronic documents: (1) determine whether the electronic data is accessible or inaccessible given the nature of the responding party's computer system with respect to both active and stored data; (2) respond that the responding party produce a small sample to determine what data may be found on inaccessible media; and (3) determine whether cost shifting is appropriate.<sup>58</sup>

The court in *Spanner Corporation v. Master Associates, Inc.*<sup>59</sup> refused production of the electronic data sought because production would be "unusually burdensome in volume."

<sup>52</sup> The first two factors are the most important of the seven factors and are weighted more heavily than the remaining five. *Id.* at 322-23.

<sup>53</sup> *Id.* at 316-17 (citing *Spanner Corp. v. Inc.*, 200 F.R.D. at 425).

<sup>54</sup> *Id.* at 319. *Opportunities Fund, Inc. v. Comstar*, 407 U.S. 369, 328 F.3d 525.

<sup>55</sup> *Id.* at 319.

<sup>56</sup> *Jones v. General Inv. Co.* 95-CIV-30094JL, 2002 WL 1605565, at \*5 (S.D.N.Y. Mar. 14, 2002) (citing *Spanner Corp. v. Inc.*).

<sup>57</sup> *Subsidiary I*, 2002 WL at 320.

<sup>58</sup> Computer which the court in *Subsidiary I* goes on to discuss five categories of electronic data and has the categories that are most accessible to law accessible (1) active, unless data are too burdensome, (2) historical, unless data are too burdensome, (3) backup tapes, (4) requested, (5) damaged. *Id.* at 316-17. Typically, the first three categories will be accessible and the latter categories will be inaccessible. *Id.* at 319-20. Accessible data does not need to be encapsulated or reduced to be "useful" whereas inaccessible data is not readily usable. *Id.* at 320.

<sup>59</sup> *Id.* at 320, one factor note discussing the analysis set forth by the court in *Subsidiary I* regarding cost shifting.

<sup>60</sup> *Spanner Corp. v. Master Assoc. Inc.*, No. C-01-30057-JSR, 2000 WL 336997, at \*1 (S.D. Cal Aug. 16, 1999).

Similarly, in *Fennell v. First Step Design*,<sup>61</sup> the court denied the plaintiff's request to examine voluminous electronic documents because it was burdensome and expensive. The plaintiff in this case requested additional discovery of the defendant's computer files in hope of finding evidence that a memo concerning the defendant's documents to terminate the plaintiff was fabricated. The court noted that the plaintiff's proposal failed to accurately describe the methodology of retaining the data and failed to protect against destruction or disclosure of privileged information. These factors, combined with costs and increased attorney fees, led the court to rule that the benefit of discovery did not outweigh the costs and risks of production.

Furthermore, courts will consider other factors when determining which side should pay for production. In *Rowe Entertainment, Inc. v. The William Morris Agency, Inc.*,<sup>62</sup> the court held that since there had been no showing that the defendants accessed either their back-up tapes or their deleted emails in the normal course of business, this factor tipped in favor of shifting the costs of discovery to the plaintiff. In *Master v. Ashford*,<sup>63</sup> the court ordered limited efforts at recovery of deleted data in order to assess the recoverability of relevant information in light of the cost of such recovery and in order to determine the scope of further efforts.

Recently, in *Wigmann v. C.R. Bard, Inc.*, an employment discrimination case, a federal court in the northern district of Illinois applied the *Zubulake* factors, adding one additional factor. "[T]he importance of the requested discovery in resolving the issues of the litigation."<sup>64</sup> The plaintiff was seeking the costs incurred in conducting discovery on defendant's e-mail backup tapes.<sup>65</sup> The "importance" factor, by the court's analysis, tends to evaluate only that "[i]f relevance is in doubt, costs should be on the side of permissive discovery."<sup>66</sup> Inclusion of this factor as the balancing test rendered the rule "in favor of cost shifting."<sup>67</sup>

Another court, though noting it was inclined to follow the *Zubulake* decisions, set a different standard for cost shifting with litigation holds. In *Kemper*

<sup>61</sup> *Fennell v. First Step Design*, 81 F.R.D.326 (S.D. Cal. 1999).

<sup>62</sup> *Rowe Entm't Inc. v. The William Morris Agency, Inc.*, 205 F.R.D. 423, 431, 33 D.A.R.T. (2001).

<sup>63</sup> *Master v. Ashford Indus., Inc.*, 209 F.R.D. 592, 573-74 (S.D. Cal. 2004) (citing factors of the additional factor brought into play by the court's rule 26(a)(1) analysis).

<sup>64</sup> *Id.* at 528.

<sup>65</sup> *Id.* at 519.

<sup>66</sup> *Id.* at 519. This factor will almost always be the factor in favor of cost-shifting.

## **Electronic Discovery (Cont.)**

*Mortgage, Inc. v. Russell*,<sup>75</sup> the court stated in response to Kemper Mortgage's query regarding which party was to pay for the preservation of the occupancy documents:<sup>76</sup>

One of the benefits—but also burdens [of computers] is that it is easier to generate a great deal of information than it was with paper systems. One of the management costs of using this technology is that it may become easier to abide by one's duty to preserve evidence, but that is not a cost which can be shifted to the opposing party, at least in the absence of a defense. For a litigator held which seeks court enforcement, random requests for discovery which can limit the amount of information which needs to be reviewed.<sup>10</sup>

#### 4. Trade Sector Policies

In *Jones v. Chord*, the court suggested that discovery of electronic databases may raise "issues of the protection of trade secrets." Unlike New York, Texas has codified the trade secret privilege in *Trade Secrets of Businesses Act*, which provides in full:

A grantor bears a privilege, which may be claimed by the grantee or the grantor's agent or employee, in relation to dividends and to prevent other persons from divesting a trade secret owned by the grantor, if the allowance of the privilege will not tend to cancel said or otherwise work injustice. When dividends are granted, the judge shall take more protective measures as the interests of the holder of the privilege and of the partner and the furtherance of justice may require.<sup>27</sup>

The rule "seeks to protect two competing interests (1) male owners are an important property interest worthy of protection, and (2) all facts necessary for the fair adjudication of a lawsuit must be disclosed."<sup>100</sup>

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<sup>16</sup> Escrow Mortgage claimed it had enlisted a computer financial expert to offer a litigation hold by "locking" the plaintiff's corporate server and bypassing and that the process would cost approximately \$100,000.00.

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<sup>12</sup> Jones v. Glavin, No. 79 CV 2950224, 2000 WL 907064, at \*12 (S.D.N.Y. Mar. 16, 2000) (New York courts generally refuse to grant that Foreign entities the U.S. C. T. C. in Domestic § 199 (2000) allowing a qualified subsidiary privilege for the dividends and other confidential commercial information). See also *Levitt Corp. v. Four Marwick, Makred & Co.*, 458 U.S. 266, 261 U.S. 133, 140 (1969) (same); *State v. General Electr. Corp.*, 333 U.S. 245, 255 (1957) (same).

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<sup>44</sup> *Auto Head Model Co. v. Standard Steel Mfg. Co.*, 17 U.S. 334, 231, 337 (1st App.—Austin 1834); *id. at 333* (1st Cir. 1834); *id. at 334* (1st Cir. 1834); *id. at 337* (1st Cir. 1834). See also *De Motte v. Bridgeport Manufacturing Co.*, 196 U.S. 547, 549, 552 (1st Cir. May 22, 1903) (reversing the application of the analysis set forth in *id.* to a Circuit Case File); *De Motte v. Bridgeport Manufacturing Co.*, 196 U.S. 553 (1st Cir. June 1, 1903) (affirming the application of the analysis set forth in *id.* to a Circuit Case File). In *De Motte*, the Court held that it was necessary for a first administration of the circuit to be held in the first judicial circuit, if appellate jurisdiction were given, and it was necessary for a first administration of their circuit to be held in the first judicial circuit.

First, the party-seeking protection must establish that the trial court's privilege applies under Rule 335.<sup>17</sup> The burden then shifts to the requesting party to establish that the information is necessary for a fair adjudication of its claim.<sup>18</sup> If the requesting party meets its burden, then the trial court should accept disclosure of the requested evidence as a protective order.<sup>19</sup> Discovery cannot be denied when a protective order would preserve the interest of the protecting party, even if the protective order is a direct contradiction to

Texas Rule of Evidence 307 is based upon the Supreme Court's proposed rule of evidence 308, which was never adopted by Congress.<sup>105</sup> However, twenty states, including Texas, have adopted some version of the trade secret privilege.<sup>106</sup> Only three states have addressed the scope of the privilege: Texas, Florida and California.<sup>107</sup>

most inclined to maintain a bright-line rule regarding what would or would not be necessary for the full rehabilitation of citizens, and factors divided on a country-by-country analysis that depends on the circumstances generated by each individual country. At p. 702, the rule "cannot be satisfied easily by general notions of rehabilitation"; both parties' cases, which provided information to support either the idea of rehabilitation or the lack of rehabilitation, 44

24. *In re Credit Card Cases*, 700 F.2d 1248, 1254 (1983). "A trade secret is any formula, pattern, device or compilation of information which is used to obtain an advantage and is not known or easily ascertainable by others who have not lawfully obtained it." Computer Associates Int'l., Inc. v. Altair, 516 S.W.2d 465 (Tex. 1978); *United Corp. v. Hughes*, 198 Tex. 566, 513 S.W.2d 388, 390 (1974); *Tex. Co. v. Tex. Co.*, 100 Tex. 2d 322, 333, 680 S.W.2d 116 (1984); *Lycoming Corporation v. Textron, Inc.*, 577 F.2d 1289 (1978). A trade secret usually refers to valuable trade or business information which the owner or possessor of the information, is however, outside of the holder's knowledge; (2) the extent to which it is known by employees and others involved in the holder's business; (3) the extent of the measures taken by the holder to protect the secrecy of the information; (4) the value of the information to the holder and the competitor; (5) the means of effort to copy or exceed it by the holder in developing the information; and also the time or difficulty with which the information could be properly obtained or duplicated by others. *Chicago Title and Trust Co. v. Texaco, Inc.*, 978 S.W.2d 263, 267 (Tex. 1998).

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<sup>76</sup> Jaspal + Woolley, 675-530 in 769, 974-75 8265, 1986, overruled on other grounds, Walker + Purtill, 827-839 14 403 (1985).

<sup>46</sup> *In re Coal Gas, Inc., Inc.*, 978 S.W.2d at 666-67 (citing *West Virginia's Federal Evidence § 408.05*, at 408-4 (2d ed.1995), preliminary Draft of Proposed Rules of Evidence for the United States District Courts and Magistrates, at 323, 341, 346

1939. At a 6.6 rating dealer ratio in twenty states including Alabama, Alaska, Arkansas, California, Colorado, Florida, Hawaii, Kansas, Louisiana, Maine, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, South Dakota, Texas

\*\* 21. *King Bridges-Peterson, Inc. v. Superior Court*, 9 Cal. App. 2d 339 (Cal. App. 1940); and *Kane Chemical, Inc. v. U.S.A. Inc.*, 26 Cal. 2d 727 (Cal. Sup. Ct. App. 1947).

## **Electronic Discovery (Cont.)**

In *Bradgate's Pictures*,<sup>66</sup> plaintiffs sought discovery of a chemical compound formula. Defendants asserted California Evidence Code section 1660, which provides that "If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent others from disclosing it, if the allowance of the privilege will not tend to expose him or otherwise work injustice."<sup>67</sup> The privilege exists to afford some measure of protection against unauthorized disclosure of "information that is essential to the continued operation of a business or industry."<sup>68</sup>

A party opposing disclosure of a trade secret must show that the privilege waived, then the requesting party must show more than just relevance; they must show the necessity of the information to the just adjudication of the action.<sup>100</sup>

In *State v. Comer*, the court looked to section 90.506, Florida Statutes (1991),<sup>115</sup> which provides that “[a] person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret if the disclosure of the privilege will not cause fraud or otherwise work injustice.”<sup>116</sup> If a party asserts the privilege, then the trial court must determine whether the privilege exists.<sup>117</sup> If such privilege exists, then the party seeking production must show “reasonable necessity for the requested materials.”<sup>118</sup> If production is then ordered, the court must set forth its findings.<sup>119</sup>

Alternatively, if the producing party has a proprietary interest in the architecture of the database, the database may be shielded from discovery by the trade secret privilege. Such a shield is not impossible; the database may be discovered despite a finding of privilege. However, in such cases the court may be prepared to issue a protective order to limit any potential harm to the database owner.

The Texas Supreme Court is December ruled on the related question of when a party is obligated to produce evidence that it has access to, but legally does not possess. *In re June*<sup>12</sup> involved a party to

possession of trade secret information belonging to a third party. The court analyzed the question of disclosure, "possession, custody, or control," and concluded that simply because a party to litigation has access to data (including materials in its files), that does not necessarily give the party possession, custody or control. In fact, the party responding to discovery was subject to confidentiality agreements that restricted disclosure of the information. The divided court held that disclosing the information in response to the document subpoenas would imprise the party to "illegally" take possession of the documents. *It is recommended that attorneys consider the use of confidentiality agreements when sharing trade secret information.*

### 6. The Optimum Rate of Ventilation for Efficiency

Vocalized messages are emerging as a potentially powerful source of discovery.<sup>72</sup> [T]here is nothing in theory and little in substance to distinguish [phonetic] from e-mail ... for the purposes of discovery.<sup>73</sup> Recording through cameras, audio recording devices, can be a manual process involving human intervention translating vocalized messages to lengthy and expensive process.<sup>74</sup> Although vocalized transcription software exists, the technology is in its infancy.<sup>75</sup> Handicaps such as accents, regional dialects, elevated emotions (e.g., shouting, crying), foreign languages, proper names, and shortened expressions still stand in the way of accurate software-based transcription.<sup>76</sup> Moreover, vocalisms cannot be filtered until after manual transcription, so parties could expand significant resources on vocalized discovery only to end up empty-handed.<sup>77</sup>

<sup>43</sup> See Paul D. Bogen, *Patent Law and the Search for New Targets of Patent Infringement*, <http://www.ustechlaw.com/patentlaw/patentlaw.htm> (last visited June 2006); see also Ross Mirkarimi et al., *Copyrights: The Next Frontier in Intellectual Discovery*, <http://www.ustechlaw.com/patentlaw/patentlaw.htm> (last visited June 2006).

<sup>17</sup> Susanna J. Wilson, *Is Digital Disruption Disruptive? Disruption and Discovery in Civil Litigation*, <http://www.law.berkeley.edu/~swilson/pubs/Disruption.pdf>.

14. *James C. Nease, Edmund S. Jagger, and the 1863-64 Slave Riots in the District of Columbia*. New Orleans, LA: 2003. <http://www.civilwar.org/1863-64-slave-riots.html> [Citation based on electronic document, which may have been modified or updated since original publication.]

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## Electronic Discovery (Cont.)

handled. Still, voicemails can be valuable, persuasive evidence.<sup>11</sup>

Recent improvements in technology will allow voicemails in one day be as searchable as text-based emails. This new technology capitalizes on the fact that teleconferencing systems no longer depend on single tapes—voicemails are now stored electronically.<sup>12</sup> These digital voicemails are stored on hard drives and can be saved (like emails) for as long as a company is willing to maintain the data.<sup>13</sup> Some companies presently use telephone systems that email employees' voicemails to them as WAV attachments.<sup>14</sup> These voice-mail-turned-emails can contain such information as the incoming phone number, the date and time of the call, the length of the message, and an associated name (through a company's address book).<sup>15</sup> Also, several companies are attempting to eliminate the need for human transcription by continuing to develop software to automatically transcribe these digital voicemails.<sup>16</sup>

Courts have begun to address the preservation of voicemails for discovery purposes. Courts have held that discoverable, electronically-stored data includes voicemail.<sup>17</sup> Although there are currently no cases where a party is sanctioned for deletion of voicemail evidence, courts are starting to grapple with the issue.<sup>18</sup>

### 5. Requesting Electronic Evidence

In requesting and producing electronic evidence, the key considerations in choosing available methods and tools include managing the gathering of the material, the privilege review and production of the material, and the analysis and culling of the material.

#### 1. Tools for Managing the Production of Electronic Data

A common method of addressing electronic evidence is to revert to the traditional form of document review and discovery: point out the information, review it for privilege and produce it to opposing counsel in paper form. Not only is this method more given the source of the original material, it is often the most expensive than using electronic search engines specifically designed to support the production of electronic evidence, including e-mail, databases and document servers.<sup>19</sup> Such software allows for the online systematic and organized gathering of electronic data as well as the privilege review and production of a privilege log. The produced data is then linked with a search engine and together they support evidence culling and analysis.

The discovery of electronic information presents challenges to the respondent, as well as to the proponent of a request for such discovery. For example, is the respondent obligated to take steps to produce all electronic records, including those that it had intended to delete? To what lengths must the respondent go to reconstruct deleted documents? Will the respondent be forced to retain a technical expert to collect and/or recover electronic documents?<sup>20</sup>

#### 2. Consider Requesting Data in Original Electronic Form

As previously noted, the use and manipulation of electronic data can be enhanced if the material is produced in electronic form. In some cases, the data is not manipulable provided in electronic version. In one case, the trial court ordered the disclosure of records in magnetic tape format instead of as a hard copy. In that case, the agency maintained the requested files in computer format, the files could be reproduced on computer tapes quickly and at minimal cost, and the same information provided as printed copy would use more than 1,000,000 sheets of paper, too many than

<sup>11</sup> See *United States v. Smith*, 15 F.3d 1501 (5th Cir. 1993) (describing evidence of insider trading after among other evidence of his golf, a unusual record defendant's awareness of insider information and stock trading activity).

<sup>12</sup> *Id.* at 44.

<sup>13</sup> *Id.*

<sup>14</sup> *See, e.g.* *Smartbox*.

<sup>15</sup> *Id.*

<sup>16</sup> *See, e.g.* *Smartbox*, *Inc.*, *http://www.smartbox.com/voicemail/voicemail.html* (last visited Sept. 20, 2005).

<sup>17</sup> See *Thompson v. U.S. Dept. of Hous. & Urban Dev.*, 209 F.R.D. 98, 105 (D. Md. 2003) (the phrase "electronic records" encompasses voicemail); *United States v. Jones*, 48 F.R.D. 34 (District Ct. 1995) (produced text and other electronically-stored information located on a hard disk to virus and messages and the, back of virus and files, email messages and files bodies would then defined emails, data files, programs files, backup and restored tapes, temporary files, temporary files with the information retain on them, copied or made copies, and the like); *See, e.g.* *U.S. v. Clegg*, 2005 U.S. Dist. LEXIS 464, 464 (2005) ("As used in this Order, 'record' means any ... recording, report, specification, statement, summary, diagram, message record or log, transcript, video, television, computer, writing, work paper, ... or any other form or group of documentary material or information, regardless of physical or electronic format or characteristics, and any information thereon, and copies, notes, and recordings thereof," (emphasis added)).

<sup>18</sup> *See, e.g.* *Thompson*, *supra* note 17, *at 105* (2003) (noting parties to negotiate the production of electronic evidence, observing, "Typically though fact a court has been to submit to the defendant that [plaintiff] would send a copy of [plaintiff's] electronic message to defendant's evidence by [plaintiff's] email").

<sup>19</sup> *See, e.g.* *Smartbox*, *http://www.smartbox.com* (last visited Oct. 12, 2005); *Requesting Electronic Discovery Software*, developed by Kroll Ontrack, Inc. of Dallas, Texas.

<sup>20</sup> *See Matti K. Pekkan, "Discovery Software Should Include All Five Phases of Electronic Evidence," *N.Y. L.J.*, Aug. 1, 2004, at 5.*

## Electronic Discovery (Cont.)

\$10,000 to print, require five to six weeks to produce and would cost the petitioner hundreds of thousands of dollars to reconstruct in a computer-readable format.<sup>13</sup>

In another proceeding, a court granted a writ of mandamus requiring the police department to furnish the petitioner with copies of certain magnetic tapes and paper copies of record logs of information stored in tapes, where the petitioner presented legitimate reasons why paper copies of records on tape would be insufficient and impracticable. In that case, under the Illinois Public Records Act, the petitioner was entitled to either copy the computer tapes that she requested or have the agency keep her the tapes so that she could copy them.<sup>14</sup>

The new federal rules contemplate requesting data in native form.

### 3. Checklist for Requesting Electronic Data

The following checklist for discovery of electronic evidence and other computer-related documents can be tailored to meet the demands of the large document case:

A. Request that the electronic information be submitted in computer-readable form. This allows counsel to perform key word searches to locate relevant information and to reform the information in a preferred form, such as a table or list. A trial court may order a party to produce information in computer-readable form, on a disk or a CD, even though the precise information has already been supplied in a printed form.<sup>15</sup>

B. Determine how the costs for obtaining and handling the electronic information will be borne. Decide the sharing of costs with opposing counsel. Utilize new forms of technology for reviewing data. See, [www.stenly.com](http://www.stenly.com) or [www.attenu.com](http://www.attenu.com) as examples.

C. Identify potentially relevant electronic information and the format in which it might be stored such as e-mail, graphics files, or word processing files.

D. Determine technology issues such as the framing of discovery questions, the specific computer systems involved in the litigation and the potential need for computer forensics assistance to review electronic information with a computer expert. Determine if a

computer expert may be needed to assist or testify at trial.

E. Consider obtaining a protective order for certain electronic information, such as information that contains trade secrets or is computer source code.

F. Use discovery to obtain information on the computer system used by the opposing party, including the type of hardware, operating systems, and applications used.

G. Decide on forensic data preservation. It is important, in some cases, parties should preserve electronic data using a forensically verifiable means that preserves the integrity of the data on hard drives. Copying data from one repository to another can impact metadata and other information that could, in certain cases, constitute relevant evidence to the case. (If there is no issue whether and when an employee created a document, metadata would provide some information pertinent to this issue.) Additionally, in many situations, data that is "deleted" from a user's active computer can be recovered through forensic means by analysis of hard drive data.

Common applications facilitate a more forensically verifiable means of extracting and reviewing hard drive data, including applications that permit to copy, bit by bit, all the data on a hard drive. These applications, including the EnCase® application from Guidance Software, allow for a higher level of data verification to both reflect the actual information that was on each user's hard drive and to provide an expert the ability to potentially extract deleted files. Other options include extraction and analysis of the actual hard drive from user's systems. See, e.g., [http://www.guideforensics.com/products/downloads/whitepaper/legal\\_forensics\\_2006.pdf](http://www.guideforensics.com/products/downloads/whitepaper/legal_forensics_2006.pdf)

In any of these cases, a well trained professional experienced in data retrieval and use of these tools should be hired early in the discovery process. These experts should have experience testifying in documentation, application of chain of custody principles and data analysis techniques.

H. Determine how counsel will process and use the electronic information that is discovered. Processing may involve searching through the information. Use of the information may involve the production of trial exhibits.<sup>16</sup>

Other aspects of electronic information, which are not considered part of the body or content of a message or file but can be of immense importance, include data

<sup>13</sup> *Associated Publishers, Inc. v. New York City Dept. of Aging*, 280 F.3d 62 (2d Cir. 2002).

<sup>14</sup> *Santos et al. v. Adelpurina v. Cleveland*, 539 N.E.2d 665 (Illinois 1992).

<sup>15</sup> *NBC News Inc. Corp. v. Manhattan Blue Books Co.*, 454 F. Supp. 2279 (E.D. Pa. 1983).

<sup>16</sup> See *See, Part II: Recovery and Reconstruction of Electronic Trial Evidence* § 24 (2004).

## Electronic Discovery (Cont.)

and time stamps reflecting the date of saving or transmission and the date of receipt, and a message's list of recipients. The computer-generated "history" of a document may be important in determining a particular sequence of events in dispute. Automatically generated evidence of when a computer file was edited, when a utility was last used, or when an e-mail message was transmitted by the sender or opened by the recipient may be useful tools to the litigator. The list of e-mail recipients, including those who were second and third generation recipients, can help prove motive, knowledge, malice, bias, or a waiver of a privilege, for example. In short, counsel should carefully check date and time stamps and the recipient lists, in addition to checking the body of the electronic information obtained through discovery.<sup>102</sup>

Indeed, substantial information on computer-readable media may be useful to litigators even though it does not appear as a printout. For example, information relating to the programs and coding used to input the data may provide valuable insight into business methods when analyzed by a qualified computer expert.<sup>103</sup> In one case, where a computer utilized in a particular business had been programmed with standards that promoted racial discrimination, the information was held to be fully discoverable.<sup>104</sup> One court has held that when statistical analyses have developed from more traditional records with the assistance of computer techniques, the underlying data used to compute the statistical computer input, the methods used to select, categorize, and evaluate the data for analysis, and the computer outputs are all proper subjects for discovery. Consequently, the discovery requests which seeks minute information about the defendant's computer capabilities, "including information about their computer equipment, raw data, programs and data management systems, in addition to the production of tapes which contain information about past and present policyholders . . . [a]re not per se irrelevant."<sup>105</sup> Conversely, discovery of compilations and information from an automated litigation support system (ALSS) should not be allowed in situations where the normal documents from which the ALSS recovered information are available to the requesting party in their original form.<sup>106</sup>

### 4. Responding to the Request for Electronic Data

<sup>102</sup> 40 Am. Jur. Power to Search for & Discovery and Examination of Evidence and its Relation § 2 (2005).

<sup>103</sup> 12 Am. Jur. Texas Civil Procedure § 84 (2002).

<sup>104</sup> *Dowell v. Admixture, Inc.*, 99 F.R.D. 165, 169 (S.D. Ohio 1988).

<sup>105</sup> *3000000 v. Bell Atlantic Telephone Co.*, 2000 U.S. Dist. LEXIS 17060.

<sup>106</sup> 12 Am. Jur. Texas Civil Procedure § 84 (2002).

In responding to a request for electronic evidence in Texas state court proceedings, it is particularly important to follow the procedures outlined in the Texas Rules of Civil Procedure and to prove up the basis of any objections.

Texas Rule of Civil Procedure 196.4<sup>107</sup> defines the basis for responding and responding to requests for electronic evidence. If the responding party plans to assert that the requested electronic or magnetic data responsive to the request is not reasonably available to the responding party in ordinary course of business, then the responding party must assert an objection to the request on the ground:

Further, in *In re Cf. Hns. Inc.*,<sup>108</sup> the party responding to a request for electronic evidence objected on the grounds that the request was overbroad and that it violated the Electronic Communications Privacy Act. The Texas Supreme Court held that the objecting party failed to produce evidence supporting its objections, therefore the objections were overruled and the trial court did not abuse its discretion in ordering the production of the electronic data.

<sup>107</sup> This article is the first three parts of a six-part comprehensive paper on ESI topics. The other four parts cover: Use of Electronic Evidence at Trial, Discovery Practice, Public Meeting Logs Information Costs, Privileges and Errors. The full article is available at <http://www.lawandtech.com> in the Knowledge Connect section, Publications.

<sup>107</sup> Tex. R. Cr. P. 196.4.

<sup>108</sup> 2005 OKLAW. ACT. 202, 97, 2014 (Apr. 2002).



## **CONGRATULATIONS!**

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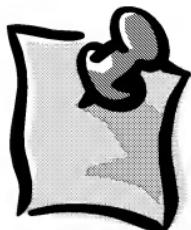


## **DON'T MISS THE CELEBRATION!**

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Mark your calendars – CAPA will be hosting a Paralegal Day Celebration on October 23<sup>rd</sup>.



## **CLE NOTICE!**

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September 20<sup>th</sup> - Claiborne (Clay) Cowan with Foster Malish Blair & Cowan, LLP speaking on "Ten Reasons to Plan Your Estate Now"

The event is being sponsored by Lakeside Mediation and will be providing meals from Apple Annie's.

RSVP no later than 5:00 p.m. on 9/15 by emailing [JGunter@capatx.org](mailto:JGunter@capatx.org) or calling her at 476-8591.

## Paralegals Committed to Excellence

### Connecting, Networking, Learning, Growing and Giving

As a member of the Capital Area Paralegal Association (CAPA), you are a vital part of our legal network. As an industry, we are committed to excellence in every area of work, life, community and our legal profession. Please join us at one of our events, attend a committee or board meeting or participate in a study group. We encourage you to bring a co-worker to one of our luncheons or volunteer with VLS. Please send updates to this directory to [events@capatx.org](mailto:events@capatx.org).



#### VOLUNTEER & COMMUNITY PROJECTS

##### ♦ HELP NEEDED ♦

Please consider volunteering as CAPA's *Community Projects Chair* or *Volunteer Legal Services Chair*. You can network and take on a leadership role with CAPA while giving back to your community! If you're interested, please contact Michele Flowers Brooks at [MBrooks@capatx.org](mailto:MBrooks@capatx.org).

#### Volunteer Legal Services (VLS)

CAPA is pleased to announce that a \$250 donation will be sent to VLS on behalf of CAPA to support its amazing efforts in Central Texas.

VLS is a non-profit organization that assists low-income Texans with their civil legal problems, including providing free legal clinics and finding attorneys willing to work for free.

If you would like to volunteer with VLS, please call 512.476.5550.

#### Flower Fund Donations

Drop contributions in the Flower Buckets on your luncheon table at our monthly meetings.

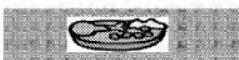
Aug-Oct 2006 | Casa of Travis County | Advocates for abused and neglected children in Travis County since 1985 |

Please place your change, bills and/or checks into the flower pots located on the tables.

#### “Team CAPA”

Charity events with a team effort!

Looking for participants for charity walks, runs, rides and other events in the Austin metroplex area? | TO SIGN UP or for more information, please contact CAPA Public Relations Chair, Vanessa Petrea, via email at [VPetrea@capatx.org](mailto:VPetrea@capatx.org)



#### MONTHLY LUNCHEONS

Last Wednesday of each month

11:45 am - 1:15 pm

(CLE credit pending / NALA and TBLS)

#### Green Pastures Restaurant

811 West Live Oak | Reservations Required by 12 pm Thursday preceding | Members \$15 | Non-members \$17 | No meal \$0 | Late RSVP Fee \$20 | [RSVP@capatx.org](mailto:RSVP@capatx.org)

Plan to join us each month to network, chat with friends, meet new vendors and eat fabulous food provided by the chefs at Green Pastures.

OCTOBER 25 | Speaker: Dana DeBeauvoir | Topic: Researching Electronic County Clerk Records | TBLS Approved/NALA Pending.

NOVEMBER 29 | Speaker: Andrew Weber, former Clerk for the Supreme Court of Texas |

Topic: Internal Procedures for the Supreme Court | TBLS Approved/NALA Pending.

JANUARY 31 | Speaker: The Honorable Lee Yaeckel | Topic: TBA | TBLS Approved/NALA Pending



#### CONTINUING EDUCATION (CLE) OPPORTUNITIES

#### NALA Exam Schedule and Application Filing Deadlines:

December 1-2, 2006 – Examination

October 1, 2006 – Filing Deadline

October 16, 2006 – Late Filing Deadline

March 23-24, 2007 – Examination

January 15, 2007 – Filing Deadline

January 29, 2007 – Late Filing Deadline

July 20-21, 2007 – Examination

May 15, 2007 – Filing Deadline

May 30, 2007 – Late Filing Deadline

#### Study for Success

A Study Group to prepare for the NALA Certification Exam is meeting each week beginning August 21, 2006. Watch for news about the time and location.

For CAPA CLE or Study Group information, contact Kathy Harkins 512.478.1657 x 155; [CLE@capatx.org](mailto:CLE@capatx.org) or [StudyGrp@capatx.org](mailto:StudyGrp@capatx.org).

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**COMMITTEE | GROUP  
NEWS & MEETINGS**

**CAPA Board of Directors**

The CAPA Board of Directors meets on the 2nd Tuesday of each month at 12:00 p.m. at the Holiday Inn at Towne Lake located at 20 N IH 35. **MEMBERS ARE WELCOME AND ENCOURAGED TO ATTEND.** To RSVP and/or to provide information to be included on the Agenda, please contact Michele Flowers Brooks by calling 391-4971 or via email at [MBrooks@capatx.org](mailto:MBrooks@capatx.org)

♦ HELP NEEDED ♦

**Public Relations Committee**

The Public Relations Committee is in need of individuals who are persuasive writers and eloquent public speakers. If you're interested in being a part of CAPA's PR Committee, please contact Vanessa Petrea by calling 512.322.5843 or via email at [VPetrea@capatx.org](mailto:VPetrea@capatx.org).

**Sustaining Member Liaison**

CAPA is looking for an outstanding individual who loves to network and can facilitate communications between the Sustaining Members/Vendors and CAPA board members. For more information about this exciting position, please contact Michele Flowers Brooks at [MBrooks@capatx.org](mailto:MBrooks@capatx.org)



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Cheryl Graham	09.10
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Wendy Williams	09.20
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**PARALEGAL DAY  
CELEBRATION**

Mark your calendars for **Monday, October 23, 2006!** CAPA will be hosting its annual Paralegal Day Celebration. Plan to join us as we honor your hard work and dedication to the legal field. There will be food, drinks, prizes, and great networking so don't miss out! Watch for more information on this event in the coming weeks.

**CAPA HOLIDAY PARTY**

CAPA is planning a fantastic Holiday Party! If you enjoyed the party at Lucy's Boatyard last year, you won't want to miss this event. More details about the CAPA Holiday Party will be available soon.

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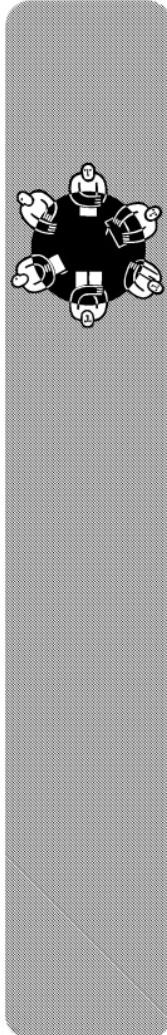
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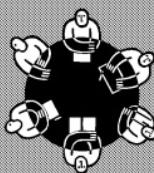
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